

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



75- 1117

In The  
UNITED STATES COURT OF APPEALS  
For the Second Circuit

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PMS

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Docket No. 75-1117  
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UNITED STATES OF AMERICA,

Appellee,

-against-

PEDRO LUIS ANCIN, JOSE JAUREQUI,  
a/k/a Aramis Ferndandez, a/k/a  
Jose Torres,  
MARIO GARCIA, a/k/a Mamua,  
CARMELL JINOKAUR, CHARLES  
SCHREIER and PEDRO CANALES,

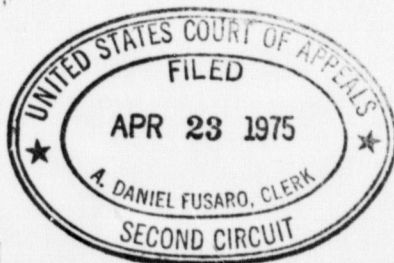
Defendants.

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PEDRO LUIS ANCIN,

Defendant-Appellant.

On Appeal From the United States District  
Court For the Southern District of New York

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APPENDIX  
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1a

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

INDICTMENT

-v-

74 Cr. 224

PEDRO LUIS ANSIN, JOSE JAUREQUE,  
a/k/a Aramis Fernandez,  
a/k/a Jose Torres,  
MARIO GARCIA, a/k a Mamua,  
CARMELLA JINOKAUR, CHARLES  
SCHREIER and PEDRO CANALES,

Defendants.

-----X

The Grand Jury charges:

1. From on or about the 1st day of November, 1973 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, PEDRO LUIS ANSIN, JOSE JAUREQUI, a/k/a Aramis Fernandez, a/k/a Jose Torres, MARIO GARCIA, a/k a Mamua, CARMELLA JINOKAUR, CHARLES SCHREIER and PEDRO CANALES, the defendants and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederate and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would

distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

#### OVERT ACTS

In pursuance of the said conspiracy and to the effect the objects thereof, the following overt acts were committed in the Southern District of New York:

(1) On or about November 13, 1973, the defendants CHARLES SCHREIER and PEDRO LUIS ANSIN had a meeting at 3 Hamilton Place, New York, New York.

(2) On or about November 13, 1973, the defendants MARIO GARCIA, a/k/a Mamua and CARMELLA JINOKAUR went to the area of 3 Hamilton Place, New York, New York.

(3) On or about November 13, 1973, the defendants MARIO GARCIA, a/k/a Mamua, CHARLES SCHREIER and PEDRO LUIS ANSIN had a meeting at the El Relog Restaurant at Broadway and 125th Street, New York, New York.

(4) On or about November 13, 1973, the defendants PEDRO LUIS ANSIN and MARIO GARCIA, a/k/a Mamua sold approximately 25.21 grams of cocaine hydrochloride for nine hundred dollars.

(5) On or about November 26, 1973, the defendant JOSE JAUREQUI, a/k/a Aramis Fernandez, a/k/a Jose Torres drove to the vicinity of the Bayona Restaurant, 52 Eighth Avenue, New York, New York.

(6) On or about November 26, 1973, the defendants JOSE JAUREQUI, a/k/a Aramis Fernandez, a/k/a Jose Torres and PEDRO LUIS ANSIN sold approximately 116.5 grams of cocaine hydrochloride for twenty eight hundred dollars.

(7) On or about December 7, 1973, the defendants PEDRO CANALES, CARMELLA JINOKAUR and MARIO GARCIA, a/k/a Mamua had a conversation concerning the delivery of a sample of cocaine.

(8) On or about December 7, 1973, the defendant PEDRO CANALES delivered a sample of cocaine in the La Bilbaina Restaurant at 218 West 14th Street, New York, New York.

(Title 21, United States Code, Section 846).

## COUNT II

The Grand Jury further charges:

On or about the 13th day of November, 1973, in the Southern District of New York,

PEDRO LUIS ANSIN and

MARIO GARCIA, a/k/a Mamua

the defendants, unlawfully, wilfully and knowingly did

distribute a Schedule II narcotic drug controlled substance,  
to wit, approximately 25.21 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812  
841(a)(1) and 841(b)(1)(A), 18 United States  
Code Section 2).

COUNT III

The Grand Jury further charges:

On or about the 26th day of November, 1973 in the  
Southern District of New York,

JOSE JAUREQUI, a/k/a Aramis Fernandez, a/k/a

Jose Torres, and PEDRO LUIS ANSIN

the defendants, unlawfully, wilfully and knowingly did dis-  
tribute and possess with intent to distribute a Schedule II  
narcotic drug controlled substance, to wit, approximately  
116.5 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A).)

COUNT IV

The Grand Jury further charges:

On or about the 7th day of December, 1973 in the  
Southern District of New York,

PEDRO CANALES,

the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 0.25 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A).)

/s/ Richard Eldrige  
FOREMAN

/s/ Paul J. Curran  
PAUL J. CURRAN  
United States Attorney

(In open court, jury present.)

MR. KAPLAN: Your Honor, may we approach the side bar just one minute?

THE COURT: Yes, indeed.

(At the side bar.)

MR. KAPLAN: The defendant was arrested by agents of the Drug Enforcement Agency on February 20 or 21st. He thereafter allegedly made admissions to an assistant United States attorney in the office of the U. S. Attorney.

My understanding is now that there is going to be an attempt to introduce those admissions. In view of that, I would ask that we have a hearing to determine whether or not they were done in conformity with the prevailing law.

THE COURT: Let me hear from the Government on that.

MR. PEDOWITZ: Your Honor, I think this is awfully late in the game to be making such a motion.

THE COURT: Well, there was a motion made previously.

MR. PEDOWITZ: I understand that, your Honor, and that motion was denied at that time on the basis of the evidence submitted in the affidavit by Mr. Kaplan.

1                   jge  
2                   I have heard nothing about any additional evi-  
3                   dence which would alter your view of this particular situa-  
4                   tion.

5                   THE COURT: Mr. Pedowitz, first, do you propose  
6                   to introduce the admissions?

7                   MR. PEDOWITZ: Yes.

8                   THE COURT: The admissions were allegedly made  
9                   here in the courthouse. And who was allegedly present  
10                  when the admissions were made?

11                  MR. PEDOWITZ: Agent Dowd of the Drug Enforce-  
12                  ment Administration, Agent Murphy and Assistant U. S.  
13                  Attorney Batchelder.

14                  THE COURT: And do you represent to me that you  
15                  inquired of Mr. Batchelder and have ascertained that he  
16                  made the appropriate Miranda, or gave the appropriate  
17                  Miranda warnings?

18                  MR. PEDOWITZ: I have inquired, your Honor.

19                  THE COURT: And is it your testimony here and  
20                  now that those warnings were given, not testimony, your  
21                  statement to me here and now that those warnings were given  
22                  and complied in every way, shape and form with Miranda?

23                  MR. PEDOWITZ: Yes, your Honor.

24                  THE COURT: Very well.

25                  What we will do, Mr. Kaplan, is, on that represen-

1           tation I will permit the Government, if they are so advised,  
2           to mention the matter in their opening statement.  
3

4                     At the time when their first witness testifies  
5           and they proceed to lay the foundation which will be pre-  
6           requisite for admitting these admissions, I will permit  
7           you, if you are so advised, to request at the side bar that  
8           the jury be excused and we will inquire into the matter  
9           at that time.

10                    The other would be, of course, to require the  
11           warnings to be elicited in the presence of the jury and that  
12           we go on from there.

13                    I'll permit you to do it either way.

14                    At this juncture I am going to deny your appli-  
15           cation for a hearing now. However, I would suggest that  
16           before any evidence is introduced, I will permit the matter  
17           to be explored and I'll give you the option of doing it either  
18           in the presence of or in the absence of the jury.

19                    MR. KAPLAN: Thank you, your Honor.

20                    (In open court.)

21                    THE COURT: Ladies and gentlemen, we are going to  
22           proceed now to the opening statements. As I indicated,  
23           the Government will go first and Mr. Kaplan has indicated  
24           that he will await the Government's opening statement before  
25           he indicates his preference in the matter, and that is his

2 going to hear more detail. You are going to hear from  
3 Special Agent Alleva and you are going to hear also from  
4 surveillance agents.

5 Ladies and gentlemen, you are also going to  
6 hear the words of the defendant Pedro Luis Ansin after he  
7 was interviewed after his arrest, at which point he made  
8 admissions. He made a confession.

9 MR. KAPLAN: Just for the record, may I, although  
10 we have discussed this, your Honor, object to any further  
11 statement concerning what Mr. Pedowitz is about to say?

12 THE COURT: I don't think Mr. Pedowitz is about  
13 to say anymore at this time.

14 MR. PEDOWITZ: I am not, your Honor.

15 THE COURT: Very well.

16 MR. PEDOWITZ: I am going to say something  
17 additional, your Honor, but not about the confession.

18 THE COURT: Please. Don't characterize.

19 MR. KAPLAN: May I move to strike.

20 THE COURT: Strike it. The jury will disregard  
21 it.

22 You may proceed, sir.

23 MR. PEDOWITZ: Thank you very much, your Honor.

24 Ladies and gentlemen, the defendant is entitled  
25 to protection under our constitutional system of Government.

1 jge  
2 He is entitled to be adjudged on the basis of evidence,  
3 and of course, as Judge Ward has told you, my statement to  
4 you is not evidence. You will hear the evidence out of  
5 the mouths of the Government's witnesses. And the defend-  
6 ant is entitled to have his guilt adjudged on the basis of  
7 all the evidence and you should wait until all the evidence  
8 is in and you should only judge him guilty if you find him  
9 guilty beyond a reasonable doubt.

10 Now, ladies and gentlemen, this is an important  
11 case to the defendant. He is charged with a serious  
12 crime. It is also an important case to the Government.  
13 You are a jury of New Yorkers and you know how important  
14 narcotic cases are.

15 MR. KAPLAN: I object, your Honor.

16 THE COURT: Sustained. I don't think it is  
17 necessary to get into that. This is an important case to  
18 the defendant. This is an important case to the Government,  
19 period. The jury will disregard anything else.

20 MR. PEDOWITZ: Ladies and gentlemen, that is all  
21 I have to say at this time and I thank you very much for  
22 your attention.

23 THE COURT: Thank you, Mr. Pedowitz.

24 MR. KAPLAN: May it please the Court, because  
25 of the inflammatory nature of the opening --

1                   jge  
2                   THE COURT: Please. No speeches from you either,  
3                   you know.

4                   MR. KAPLAN: Very good.

5                   Ladies and gentlemen of the jury, Mr. Ansin sits  
6                   before you and he is being charged with certain crimes. His  
7                   Honor of course will at the end of the trial instruct you  
8                   as to the law, which of course you'll accept. He will  
9                   instruct you further that you ladies and gentlemen are to  
10                  determine the facts, the facts based on the testimony you  
11                  hear and whatever evidence goes in in the form of documents.

12                  The opening, as indicated by Mr. Pedowitz him-  
13                  self, is not evidence at all. It is his idea of what he  
14                  hopes to show, nothing more.

15                  In order to begin to show what he claims, he has  
16                  to do it through testimony of witnesses, and that of course  
17                  is what you'll look for.

18                  His Honor of course will further instruct you  
19                  that the defendant sits here innocent in your eyes and in  
20                  the eyes of the law because of the fact that he pleaded  
21                  not guilty to the charges to be proved beyond a reasonable  
22                  doubt. His Honor will tell you what kind of doubt that  
23                  is, what is the quantum of proof for reasonable doubt.

24                  His Honor also will explain to you that the  
25                  Government has to prove each and every element of the crime

1 where one Charles Schreier was seated with a female. The  
2 female was introduced as Carol.

3  
4 MR. KAPLAN: I object, as hearsay.

5 THE COURT: Well, it is a little unclear to me  
6 relative to the form of the question and it may be that  
7 your hearsay objection is well taken.

8 I would suggest that if the matter was rephrased  
9 I would be in a better position to rule on your objection.

10 I will strike the answer in its present context  
11 and have Mr. Pedowitz just go back a question or so.

12 Q Agent Alleva, when you arrived at the restaurant,  
13 you entered it?

14 A Yes, sir, I did.

15 Q And who, if anyone, did you meet at that time?

16 A I met a Charles Schreier and a female by the  
17 name of Carol.

18 Q And what, if anything, did Charles Schreier say  
19 to you and what, if anything, did you say to him?

20 MR. KAPLAN: Objection, your Honor. Hearsay.

21 THE COURT: Yes, but I note the date in question  
22 and I'm going to allow this in subject to the Government's  
23 making, by competent, independent proof, a conspiracy which  
24 predated in point of time the 13th of November 1973.

25 In the event that is not done by competent,

independent testimony, in the first instance, a motion to strike this testimony will lie, and in the second instance you may want to go further with your application.

So I am going to admit it subject to proof being received independently of a conspiracy and, second, subject to a motion to strike or for such other and further relief as you deem appropriate.

MR. PEDOWITZ: Your Honor, could we have the question repeated, please?

THE COURT: Yes, indeed.

(Question read.)

A I asked Schreier if he had the package with him and he said no, he had to call Pedro.

He then asked to see the money. At this point we both went into the mens room and I showed him \$900 of official Government funds that I had with me.

Q Where had you gotten this \$900?

A From the United States Treasury, from our DEA's money. It is called purchase of evidence funds.

Q And after you showed Charles Schreier this money, what, if anything, did you do?

A We then returned to the table. Charles then went to make a telephone call. He returned and said that Pedro was not in. We indulged in some general conversation for

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jge Alleva - direct 36  
another five minutes or so and then he got up again to make  
a phone call. He did this several times.

Finally he sat down and said that he had reached  
Pedro and that we had to call him back, had to call Pedro  
back a little later on since the package, meaning the  
cocaine, was on its way over from New Jersey.

And Charles asked me if I would do him a favor  
and drive his girlfriend to her home.

Q What, if anything, did you do then?

A Then at about 5:30, 5:35, we left the restaurant,  
or the diner, and I dropped the young lady off, and Charles  
and I proceeded to make another telephone call at the  
intersection of, I believe, Francis Lewis Boulevard and  
Horace Harding Expressway.

Upon the completion of this call, Charles said  
to me that it was all set and we had to go to Uptown  
Manhattan, around 125th Street, but we were going to pick  
up Pedro first.

Q And after you had this conversation with Charles  
Schreier, what, if anything, did you do?

A We then got back into the Government car and  
drove to the area of 194th Lane and 64th Circle in Fresh  
Meadows.

When we arrived at this location, Charles

1 pointed out a black over gold Plymouth, stating that that  
2 was Pedro's car, and also pointed out another individual,  
3 stating that that was Pedro.  
4

5 At this point, the individual identified as  
6 Pedro came over to the car and got in and we began proceed-  
7 ing out of that circle.

8 Q Do you see that man who was introduced to you as  
9 Pedro sitting in this courtroom?

10 A Yes, I do.

11 Q Would you please point him out?

12 A The gentleman seated to my right, to his  
13 attorney's left, with the blue tie and striped shirt.

14 THE COURT: Indicating Mr. Ansin.

15 Q And after Mr. Ansin had entered this car at  
16 194th Lane and 64th Circle, where, if anywhere, did you  
17 go?

18 A He told me to go over the Triborough Bridge,  
19 that we were going into upper Manhattan, and he would tell  
20 me then when we arrived in upper Manhattan where we were  
21 to go?

22 Q And what, if anything, did Mr. Ansin say to you  
23 during this ride into Manhattan?

24 A He stated that he was going to introduce me to  
25 a source for cocaine. He, himself, was not a source nor

1 a connection for cocaine, but that he would introduce me  
2 to a connection and then step out of the picture.  
3

4 THE COURT: Is that what he said in words or  
5 in substance?

6 THE WITNESS: I would say in words, your Honor.

7 Q And where did you arrive in that Cadillac?

8 A We finally arrived at approximately the intersec-  
9 tion of 135th Street and Broadway, where another street  
10 juts off of Broadway called Hamilton Place.

11 We arrived at 3 Hamilton Place, the site of the  
12 La Paella Restaurant.

13 Q And what, if anything, happened when you arrived  
14 outside the La Paella Restaurant?

15 A We were in back of a gypsy cab and there were  
16 three individuals in the cab.

17 When Pedro got out of our Government car, two  
18 individuals exited the gypsy cab. Pedro went over to the  
19 two individuals, returned shortly thereafter with one of  
20 the individuals, and both Pedro and this other gentleman got  
21 in the car, in our car.

22 I was introduced by Pedro to the other individual  
23 as Mamua.

24 Q Two persons had gotten out of the gypsy cab, is  
25 that correct?

2 A Yes, sir.

3 Q And what, if anything, did the other person, the  
4 one who did not come to your car, do?

5 A Just remained by the cab. One individual, the  
6 driver, never got out of the cab.

7 After introductions, I suggested that we go to a  
8 place, a bar, where we could finish the deal, and --

9 MR. KAPLAN: I just object to the word "deal".

10 THE COURT: Yes. Strike the word "deal".  
11 The jury will disregard that.

12 Q After Mamua and Pedro had gotten into your car,  
13 where, if anyplace, did you go?

14 A We then drove approximately ten blocks downtown  
15 to 125th Street and Broadway, to the area of El Reloj  
16 Restaurant.

17 Q And who directed you to that bar?

18 A Mamua.

19 Q And when you arrived at that bar, what, if  
20 anything, did you do?

21 A We stopped at the bar, "we" being Pedro, Mamua,  
22 Charles, myself, stopped at the bar, ordered a drink.

23 Mamua immediately went into the bathroom, came  
24 back shortly thereafter and Pedro and Mamua said something  
25 to each other in Spanish, at which point Mamua reached into

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Alleva - direct

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2 his rear pocket, took out a clear, transparent baggie with  
3 white powder in it, and handed it to Pedro.

4 Pedro took the package and put it into his  
5 right front pocket.

6 Q After Mamua had handed Pedro the transparent  
7 bag of white powder, and Pedro had put the bag into his  
8 pocket, what, if anything happened?

9 A Pedro said to me to follow him into the mens  
10 room, he would go in and I should come in shortly after.

11 Q And what, if anything, did you do?

12 A Pedro went into the mens room and I waited a  
13 minute or two and I followed him in.

14 When I got there, Pedro opened up the plastic  
15 bag, I removed a small portion of the powder and field  
16 tested it and got a positive reaction for cocaine.

17 Q Specifically what do you mean by "field test"?

18 A A field test is a simple chemical test performed  
19 in the field, meaning in the street, to ascertain on a  
20 qualitative basis whether or not a narcotic or a barbituate  
21 or any other controlled drug is present in the powder  
22 or capsule or whatever you are purchasing.

23 Q And what type of field test did you perform  
24 that day?

25 A This particular test was a cocaine test, meaning

Second, keep an open mind on all facets of the case until it has been concluded.

The jury is excused.

(Recess.)

(Jury present.)

THE COURT: Ladies and gentlemen, we have completed the direct examination of the Government's first witness, Mr. Alleva. We will now proceed to cross examination, which will be conducted by Mr. Kaplan.

You may proceed, Mr. Kaplan.

xx

CROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Alleva, when was the first time you saw Mr. Ansin?

A On November 13, 1973.

Q Had you heard his name mentioned prior to that date?

A No, sir, I did not.

Q When was the first time you met Charles Schreier?

A That same evening, sir.

Q Had you known Charles before then?

A No, sir, I did not.

Q You had a meeting with Charles Schreier in Queens, is that right?

1  
2 A Yes, sir.

3 Q And the meeting was held at a diner known as  
4 Marchel's, is that correct?

5 A Yes, sir.

6 Q And that was on November 13, too?

7 A Yes, sir.

8 Q And when you got there, Charles Schreier was  
9 with a girlfriend?

10 A Yes, sir, he was.

11 Q That was the first time you saw the girl?

12 A Yes, sir, it was.

13 Q Prior to the November 13 meeting with Charles  
14 Schreier and his girlfriend, had anybody in the DEA  
15 assigned you to this case?

16 A No, sir. No one assigned me to this case.

17 Q You just knew you were supposed to meet Charles  
18 on the 13th, is that right?

19 A No, sir. I was asked to --

20 Q We will do this. Just bear with me. Were you  
21 directed to go to the Marchel's Restaurant to meet Charles?

22 A Yes, sir.

23 Q Who told you to go there?

24 A The case agent, Clifford Rabourn.

25 Q When did he tell you to do that?

1 A It would have been early afternoon on the 13th.

2 Q Now, in the early afternoon of the 13th, was  
3 that the first time that you were aware of the fact that you  
4 were to now embark on investigating this case involving  
5 Charles Schreier? Just yes or no, if you can answer it?  
6

7 A I don't recall, no, sir.

8 Q You don't recall?

9 A I don't recall the name.

10 Q But I'll ask it another way. Was the afternoon  
11 of November 13 the first time that you were aware of the  
12 fact that you were to go to a diner to meet a man?

13 A Yes, sir. That was the first time.

14 Q You didn't know about this on November 12th?

15 A No, sir.

16 Q On November 13, in the afternoon, did you have  
17 a conversation with Mr. Rabourn?

18 A Yes, sir, I did.

19 Q And as a result of that conversation you went to  
20 the diner?

21 A Yes, sir.

22 Q Did Mr. Rabourn go inside with you?

23 A No, sir, he did not.

24 Q Did anybody go in there? Inside the diner?

25 A No.

Q Anybody else? You were alone?

A I went in alone, yes, sir, unaccompanied.

Q You had spoken to an informer in this case prior--

MR. PEDOWITZ: Objection. May we approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. PEDOWITZ: Your Honor, I think I can see where this is going and I want to put an objection on the record now on the basis of privilege, on the basis of privilege.

MR. KAPLAN: Your Honor, I believe the cases are legion to the effect that if there is an informer, I have a right to know his name and I have a right to call him. And there was an informer here, your Honor. It started off with an informer and the man's name, your Honor, was Ronald Rogue.

THE COURT: He testified before me.

MR. KAPLAN: Yes, sir, he did, in another case. It is no secret.

THE COURT: In the Fernandez case. I don't think that any cats are being let out of the bag. In fact, he said he was a former postal employee.

MR. KAPLAN: That I didn't know. I only knew his

his name. He testified, if my memory is correct.

MR. PEDOWITZ: Your Honor, in point of fact I do not even know this man's name, and in fact I was not aware of the fact that he testified in the Fernandez case.

MR. KAPLAN: Your Honor, he did testify in the Fernandez case.

(Pause.)

MR. PEDOWITZ: Did he testify to meetings with Charles Schreier?

THE COURT: He testified in essence to becoming an informant and putting the Government on to Cynthia and Aramis Fernandez.

So --

MR. PEDOWITZ: I am not even sure it is the same informant.

THE COURT: Well, I am going to permit it, as I did in the Fernandez case, and of course I recognize that when the Government gives up an informant, if, this jury were to convict the defendant, then they have given up a great deal and perhaps the defendant may have to give up something in return. But I am going to permit it.

MR. PEDOWITZ: Your Honor, I believe there is an informant privilege.

THE COURT: Yes, I know there is and I am going

to overrule your objection.

MR. PEDOWITZ: Mr. Kaplan has made no showing whatsoever that the identity of the informant is at all necessary to his case.

THE COURT: Well, let me suggest this. I have enough background in this case, having tried one of the related cases, to indicate to you that I'm going to permit it.

MR. PEDOWITZ: Your Honor, I would only ask. Perhaps I have a moment with one of the agents to make sure it is in fact the same informant.

THE COURT: All right. If it is Mr. Roque, I assure you that he has been on the stand in this courthouse, specifically in June of this year.

MR. KAPLAN: Your Honor, there was an allegation as to him in the opening of the Fernandez case. The Government in opening mentioned the name Roque.

THE COURT: Yes, they did.

MR. PEDOWITZ: For that reason I have a suspicion that it is not the same informant.

THE COURT: Why don't you make a brief inquiry and we will wait here at the side bar.

(Pause.)

MR. PEDOWITZ: Your Honor --

1 THE COURT: Make your inquiry.

2  
3 MR. PEDOWITZ: May I ask that the jury be dis-  
4 missed for a moment while I inquire of the witness as to  
5 what his name is.

6 THE COURT: You have to inquire of the witness.

7 MR. SCHAFFER: Or perhaps your Honor can ask  
8 the witness to approach you at the bench and you may ask  
9 him.

10 THE COURT: Is that all right?

11 MR. PEDOWITZ: That is fine.

12 THE COURT: Mr. Alleva, will you step around  
13 here at the moment?

14 Let the record reflect that with the consent of  
15 defense counsel the Court is going to put a question to  
16 Mr. Alleva in the presence of defense counsel, and in  
17 the presence of the United States Attorney.

18 Can you tell me whether the informant in this  
19 case was Ronald Roque?

20 THE WITNESS: I can say it was not, your Honor.

21 MR. KAPLAN: Would your Honor permit me to, not-  
22 withstanding it was not Roque, that I still make the  
23 inquiries?

24 MR. PEDOWITZ: Your Honor, there is no --

25 THE COURT: Let the witness return to the witness

1 jge

Alleva - cross

114

2 stand. You may return to the witness stand.

3 Now, let me now go further. In other words, I  
4 was under the impression originally that the informant was  
5 a person who had already been revealed.

6 MR. KAPLAN: It was my impression too, Judge.

7 THE COURT: And you've indicated that.

8 Now, we know this much: We know that the  
9 informant was not Ronald Rogue. In the context of this  
10 case I really fail to see that it serves any useful pur-  
11 pose for your client and for your defense to reveal the  
12 identity of the informant.

13 However, I am not going to foreclose you from  
14 arguing to me in this regard and I'll hear you now.

15 MR. KAPLAN: All right, your Honor.

16 One of the purposes in requesting that the Court  
17 permit me to go into the question of identity and the facts  
18 concerning confidential informants in this case is to  
19 indicate to the jury that this entire case is built on  
20 substantive unilateral secret undercover type of testimony  
21 that may or may not be repugnant to one or two of them.

22 In addition to that, your Honor, I think that if  
23 an informant did testify--if an informant did in fact  
24 initiate this investigation, that it might be of course a  
25 question of credibility to what -- at the time he told

Mr. Alleva, who continued the investigation.

THE COURT: I find both of your arguments to be unpersuasive in the context of this case.

Let me hear the Government on this.

MR. PEDOWITZ: Your Honor, as long as you are not persuaded, I would just second your attitude towards this particular motion. My feeling is that the informant's identity is entirely irrelevant to the defendant's case. And Mr. Kaplan has made no showing whatsoever that the identity of the informant is relevant.

MR. KAPLAN: Your Honor, exactly what an informant told Mr. Alleva that precipitated Mr. Alleva's actions that he testified to at length on direct, I think is material and cogent.

Surely it goes right to the heart of what was said for over an hour and a half on direct.

MR. PEDOWITZ: I disagree with that.

MR. KAPLAN: Did he in fact -- withdrawn. Your Honor, that's my thought on it.

THE COURT: You don't have a seizure here, a suppression hearing, the determination of probable cause. This type of thing I think would permit inquiry to be made to determine whether the agent may have had probable cause to obtain a search warrant, to seek a telephone intercept

1 order or whatever. You just don't have that here. I  
2 really fail to see the justification behind your question.  
3

4 If you could give me --

5 MR. KAPLAN: May I further say this, your Honor.  
6 That if the defense of entrapment is interposed here, I  
7 think the testimony of an undercover informant would be  
8 material.

9 THE COURT: Yes, it might be. I have not heard  
10 that word used in this trial so far, and I would suggest  
11 that from what I've seen so far I could almost be persuaded  
12 as a matter of law that there was no entrapment here.

13 If you are telling me now that you intend to  
14 present proof that your client between November 13 and  
15 December 7, 1973, was entrapped into doing what he did, I  
16 will hear you. But I really don't see it.

17 MR. KAPLAN: That won't persuade the Court,  
18 will it?

19 THE COURT: No.

20 MR. KAPLAN: Then I am merely relegated to  
21 begin renewing my application that the Court permit me to  
22 make inquiries into the identity of an informant if in fact  
23 an informant did exist, and take whatever other steps--

24 THE COURT: I would suggest, I think it is fairly  
25 clear, that there was an informant. I think that

1 should be stated in the record. And our first impression,  
2 your impression, and that which we shared, was that the  
3 information was Ronald Rogue. That impression has been  
4 set aside by the statement made to us by the witness when  
5 he came off the stand.  
6

7 I just do not see a justification for it and I  
8 will sustain the Government's objection to the question who  
9 the informant was.

10 I will permit you every other latitude in your  
11 cross examination, but I will sustain that objection, to  
12 wit beyond whether there was an information, that you can  
13 ask if you haven't, I think you have.

14 The next question would be the one I would sus-  
15 tain, who was the informant.

16 MR. KAPLAN: Would your Honor permit me to make  
17 inquiries on every facet of the informant's relationship  
18 with the witness other than the name and address.

19 MR. PEDOWITZ: It seems to me that any relation-  
20 ship he might have with the witness is simply irrelevant.

21 THE COURT: Yes, it is really. Let's look at  
22 it this way.

23 If we are talking about a seizure and probable  
24 cause, I think it would be relevant there. In the con-  
25 text of this case, I don't see the relevance.

1                    You have made the offer. The Government has  
2  
3                    objected. I'll sustain the objection.

4                    MR. KAPLAN: Right. Am I given to understand  
5                    your Honor, by your Honor's ruling that I am not to refer to  
6                    an informant by name or otherwise, make no reference to it  
7                    in my cross? Is that your Honor's ruling?

8                    THE COURT: If you wish to present a name to the  
9                    witness and say does he know this person --

10                   MR. KAPLAN: I haven't got it. Other than  
11                   Rogue, I don't have a name.

12                   THE COURT: I would suggest that I would limit  
13                   you in this area relative to the informant, his identity,  
14                   the prior dealings the agent had with the particular  
15                   informant.

16                   MR. KAPLAN: I am not permitted to go into prior  
17                   dealings, your Honor.

18                   THE COURT: I just don't see its relevance. I  
19                   think it is remote. I am thinking back to the direct  
20                   examination. I don't see that it would be relevant here.  
21                   I will sustain the Government's objection.

22                   MR. KAPLAN: Yes, your Honor. Respectfully  
23                   except.

24                   (In open court.)  
25

Q Did you ask him what you were to purchase for \$900?

A He told me what I was going to purchase.

Q And what was that?

What were you to purchase for \$900?

A Approximately an ounce of cocaine.

Q From Charles?

A Yes, sir.

Q How long a conversation did you have with Charles at the diner? Approximately.

A Approximately 20 minutes.

Q In those 20 minutes you asked Charles if he had any narcotics to sell you, is that right?

A Yes, sir.

Q Did you introduce yourself to him?

A No, I didn't, sir.

Q You just sat down, strangers?

A There was another individual there who introduced us.

Q Who was that?

A It is a confidential Government informant.

Q Was this confidential informer paid any money as a result of the introduction?

A I have no direct knowledge of that.

1 jge  
2 Q In your experience as an agent of the DEA, are  
3 informers paid for introductions?

4 MR. PEDOWITZ: Objection, your Honor. It is  
5 entirely irrelevant what informants are or are not paid,  
6 whether they are or are not paid.

7 THE COURT: I am going to allow this. I don't  
8 think that Mr. Kaplan will be going much beyond this.

9 MR. KAPLAN: Yes, your Honor.

10 THE COURT: I'll permit it.

11 You may answer.

12 MR. KAPLAN: Thank you.

13 A May I have the question, please.

14 THE COURT: Yes, indeed.

15 (Question read.)

16 A On occasion, sir, they are.

17 Q Was this man paid?

18 A I testified before I have no direct knowledge.

19 Q Have you ever made inquiry whether he was paid  
20 for the introduction?

21 A No, sir, I don't.

22 Q Now, in that 20 minutes or so that you had the  
23 conversation with Charles, was that other man present?

24 A Not for the entire conversation, no, sir.

25 Q A part of it?

1  
2 A A part of the time, yes.

3 Q And then he left?

4 A And then he left? No, he did not leave.

5 Q What did he do?

6 A We all left together.

7 Q Then he was present with you for the 20 minutes,  
8 is that your testimony?

9 A Yes, sir.

10 Q Now, during the conversation with Charles  
11 Schreier, did he at any time leave the table?

12 A When you say "he", are you referring to the  
13 informant or to Charles?

14 Q Did Charles leave the table?

15 A Yes, he did, sir.

16 Q How many times?

17 A I'm not sure if it was two or three times.

18 Q Did you make notes later as to how many times  
19 he left?

20 A No, I didn't.

21 Q Did you see where he went?

22 A Yes, sir.

23 Q On all three occasions?

24 A Yes, sir.

25 Q Where did he go?

1           A     He went to the front of the diner, the alcove  
2  
3 of the diner, and made a phone call.

4           Q     Did you see him make a phone call?

5           A     I saw him deposit a coin and dial. That's all  
6 I saw.

7           Q     You don't know what number he dialed?

8           A     Absolutely not, sir.

9           Q     Did you hear the conversation he had?

10          A     No, sir. Absolutely not.

11          Q     Prior to entering the diner, did you use an  
12 electronic device?

13          A     No, sir.

14          Q     Was it suggested to you that you should use an  
15 electronic device?

16          A     No, sir, it was not.

17          Q     Are you familiar with the term Kel, K-e-l? And,  
18 if you are, would you tell us what Kel is?

19                   Please me, Mr. Alleva. Look at me.

20          A     I can look at whoever I want.

21          Q     Do you know what a Kel transmitter is?

22                   THE WITNESS: Your Honor, may I make a statement  
23 to the Court?

24                   THE COURT: No. Just answer the question.

25          A     I don't think I can answer that question.

1

2

A No, sir. That's correct.

3

Q Only you.

4

A Well, there were other people present. No other agents.

6

Q No other agents, is that right?

7

A Yes, sir.

8

Q How many agents, by the way, are in what is known as Division 2, or Section 2, do you know?

10

MR. PEDOWITZ: Objection, your Honor. Entirely irrelevant.

11

12

THE COURT: Yes. I really don't think that that serves any purpose at this point.

13

14

MR. KAPLAN: Withdrawn.

15

THE COURT: Right.

16

Q Did you ever suggest to your superiors that you would like someone with you when you had these conversations so that what you said could be corroborated?

18

19

A No, I never --

20

Q Did you ever suggest that?

21

A No, I never suggested that.

22

Q Did anybody suggest that you do it that way?

23

A No, sir.

24

Q And, of course, your answer would be the same that nobody was present on November 26 either, is that right?

25

2 Q What last name did you use?

3 A M-a-s-s-a.

4 Q Is that your name?

5 A No, sir, it is not.

6 Q Is it the name of anyone in your family?

7 A Not to my knowledge, no.

8 Q Any friend?

9 A No.

10 MR. PEDOWITZ: Your Honor, objection.

11 THE COURT: He was asked, he has answered. He  
12 is going to get on to the next subject.

13 Q Now, the defendant got in the car and he indicated  
14 that he would direct you to a particular destination, is  
15 that right?

16 A Yes, sir.

17 Q You were driving.

18 A Yes, sir.

19 Q And Charles was in the car?

20 A Yes, sir.

21 Q And there was a fourth person in the car too?

22 A Yes, sir.

23 Q Who was the fourth person?

24 A The confidential Government informant.

25 Q And then you proceeded in the car to a place

2 MR. PEDOWITZ: Objection.

3 THE COURT: Sustained.

4 MR. KAPLAN: All right.

5 Q Subsequent to that time you then got in the car  
6 and you drove to another site, is that correct?

7 A Yes, sir.

8 Q And that sight was known as El Reloj?

9 A Yes, sir.

10 Q And who directed you there?

11 A I believe it was Mamua. I'm not positive.

12 Q No, Mamua got in the car. Now there are five  
13 people in the car, is that right?

14 A Yes.

15 Q And you still had the \$900.

16 A Yes, sir.

17 Q Had you indicated to Mr. Ansin that you had  
18 \$900?

19 A No, I didn't, sir.

20 Q Didn't he ask you that "If I am going to introduce  
21 you to somebody who is going to sell you cocaine, that you  
22 have to have money?" Was there a conversation like that in  
23 the automobile?

24 A No, sir.

25 Q As a matter of fact, the conversation in the

1 jga4

2 N I C H O L A S A L L E V A resumed.

3 THE COURT: Mr. Alleva, you will be con-  
4 tinuing your testimony today under the same oath as was  
5 administered yesterday when you first took the stand.  
6 Do you understand that?

7 THE WITNESS: Yes, sir, I do.

8 THE COURT: You may proceed.

9 CROSS EXAMINATION CONTINUED

10 BY MR. KAPLAN:

11 Q Mr. Alleva, on the automobile trip on the  
12 evening of November 13th to La Paella there were four  
13 men in the car, is that right?

14 A Yes, sir, there were.

15 Q Present in the car at that time was Mr. Ansin  
16 and yourself and the informant and one other man.

17 A Yes, sir.

18 Q And that other man was Charlie.

19 A Charlie.

20 Q Did you have a discussion with members of  
21 the United States Attorney's Office concerning bringing  
22 the informant as a witness to corroborate what you say --

23 MR. PEDOWITZ: Objection, your Honor.

24 THE COURT: I will permit him --

25 MR. KAPLAN: I didn't finish, Judge.

1 jga5

Alleva-cross

2 THE COURT: I will permit him to finish  
3 his question.

4 Q -- to corroborate what you say transpired  
5 in the car on that ride?

6 MR. PEDOWITZ: Objection, your Honor.

7 THE COURT: Well, it is cross examination.  
8 If he talks about it, that doesn't mean it had to be  
9 done. But the jury is entitled to examine the credi-  
10 bility of the particular witness on the stand. I  
11 am going to permit the question to be asked.

12 Did you have such a discussion?

13 THE WITNESS: No, sir, I didn't.

14 Q Did anybody suggest that he be brought in  
15 to be used as a witness to corroborate what you are say-  
16 ing?

17 MR. PEDOWITZ: Objection, your Honor.

18 THE COURT: Well, again, there is nothing  
19 for the jury to imply that anyone has to be produced by  
20 anybody, and I am going to permit it again on the matter  
21 of credibility. I am sure the jury understands.

22 MR. PEDOWITZ: It seems to me that it is  
23 not the witness' role to decide who should or who should  
24 not be called as a witness.

25 THE COURT: That may very well be. But as

1 jga6 Alleva-cross  
2 one of the agents in the case he would have been present  
3 during discussions perhaps, if there were such discus-  
4 sions. I am going to permit the area to be inquired  
5 into. Of course briefly, Mr. Kaplan.  
6 BY MR. KAPLAN:  
7 Q Did anybody suggest that to you?  
8 A Not to me, sir, no.  
9 Q Did they suggest it to anybody working on  
10 the case with you?  
11 THE COURT: So far as you know.  
12 A As far as I know, I have no knowledge of  
13 that.  
14 Q Did you make that suggestion, that if they  
15 brought in the informant who was present in the car,  
16 that your story could be corroborated by somebody else?  
17 A No, sir, I did not make the suggestion.  
18 Q It didn't occur to you to suggest that to  
19 the lawyers for the government?  
20 A Absolutely not.  
21 Q Is it your belief that if the informant were  
22 called he could not corroborate your story?  
23 A No, sir, that is not my belief.  
24 Q He would corroborate it?  
25 A He would corroborate it.

1 jga7

Alleva-cross

2 Q But he is not being called, so far as you  
3 know?

4 THE COURT: Sustained.

5 Q There was another man in the car, Charlie  
6 Schreier?

7 A Yes, sir.

8 Q And was there any suggestion that Charlie  
9 be called to corroborate the story?

10 MR. PEDOWITZ: I am going to object to  
11 this whole line of questioning. Defense counsel knows  
12 that he is a fugitive.

13 THE COURT: Please. Don't testify  
14 as to where Mr. Schreier is or isn't or anything of that  
15 nature.

16 I am going to let the question go in.

17 Was there any discussion as to Mr. Schreier  
18 being called as a witness in this case?

19 THE WITNESS: Are you asking me, sir?

20 THE COURT: Yes.

21 THE WITNESS: Mr. Schreier is currently a  
22 fugitive from the Department of Justice.

23 Q He ran away, is that right?

24 A I don't know if he ran away or where he  
25 is. He is a fugitive.

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jgal9 Alleva-cross

hear him discuss it?

A I didn't hear him discuss it, no, sir.

Q In the 20 minutes what did you discuss in her presence? What did you talk about?

A We talked about general conversation --

Q What is general conversation?

A -- between -- may I finish?

THE COURT: Give him a chance to answer. He apparently is going to tell us now.

MR. KAPLAN: I'm sorry.

A (Continuing) We spoke about general conversation that the informant and I were supposed to know people and talked about that, social activities.

Q Excuse me. I'm sorry for interrupting.

Carol knew the informant?

A No, she did not. To my knowledge, she did not.

Q Isn't that what you said the general conversation was about?

THE COURT: No. As I heard his testimony, he is talking about people who supposedly they all knew, mutually knew.

Is that it?

THE WITNESS: Yes, sir, excluding Carol.

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A Yes, that's correct.

Q And then underneath it it says "to Queens."

A Yes, sir.

Q And then on top it says "Queens area" and then other words and numbers?

A Yes.

Q This CL 73, is that the --

A That is CL.

Q Is that the informant's number?

A No, sir.

Q Now, on this page, November 20th, you testified you were at 601 West 110th Street, is that right?

A That's correct. That's correct.

Q Does it mention Manhattan here at all, or New York?

A No, it does not.

Q Well, you were at least in New York. Didn't you bother putting it down in your log that you were in New York?

A Do I mention that?

That was obliterated up here.

Q You obliterated it?

A With the part of the other case.

Q And you obliterated it because your presence

1 jga58 Alleva-cross 214  
2 without the reference to the notes.  
3 A That's correct.  
4 Q If you referred to your notes, you would know  
5 exactly how many?  
6 A No, I would not know exactly how many.  
7 Q You know at least how many agents worked with  
8 you?  
9 A That's correct.  
10 Q Murphy worked with you, right?  
11 A I don't recall if it was on this specific  
12 occasion. He worked with us, but I don't recall if  
13 it was on this specific occasion.  
14 Q Right. How about Dowd, a man named Dowd?  
15 Did he work with you on that date?  
16 A I don't recall.  
17 Q How about a man by the name of Lieneck? Did  
18 he work with you on the 13th?  
19 A Same answer. I would have to refresh my  
20 recollection. I did not see anyone.  
21 Q You did not see anyone.  
22 A That's correct.  
23 Q You did not see anyone in Marchel's Diner,  
24 in the area of Marchel's Diner?  
25 A Any agents, no, sir.

1 jga59

Alleva-cross

2 Q Do you know of your own knowledge if any  
3 agents were in Marchel's Diner?

4 A Inside the diner?

5 Q Inside there was none, is that correct?

6 A That's correct.

7 Q How about outside?

8 A There were agents outside the diner, yes, sir.

9 Q But you didn't see them there.

10 A No, sir.

11 Q Had you not been told that there were agents out-  
12 side, you wouldn't know whether they were there or not, is  
13 that correct?

14 A That's correct.

15 Q You were going to make a purchase, as you  
16 testified, of narcotics and you didn't look around to see  
17 if you had your colleagues or co-workers in the area,  
18 is that what you are saying?

19 A That's correct.

20 Q And you just didn't look around because it wasn't  
21 important for you whether they were there or not? Is  
22 that true?

23 MR. PEDOWITZ: Objection, your Honor.

24 THE COURT: Sustained.

25 MR. KAPLAN: All right.

jga65

Alléva-cross

withdraw your question.

MR. KAPLAN: Yes, I will, your Honor.

Q All right. When you gave \$2300, on the night of the 26th, to Mr. Ansin, and he took the money, did he take any money himself?

A Yes, he did.

Q You remember that.

A Yes, sir, I do.

Q You don't remember the agents who were outside, with referring to the notes, but you remember he took money for himself, is that right?

A You asked me about --

Q Is that true, you --

MR. PEDOWITZ: Objection, your Honor. He did not testify to that. He said on November 13th he did not recall who the agents were outside. He is now referring to November 26th.

THE COURT: The question is being rephrased.

MR. KAPLAN: Right.

Q Do you remember the agents outside of Bayona on November 26th?

A Yes, I do.

Q You don't remember November 13th?

A No, I don't.

1 jgal27 Rabourn-direct

2 leading, recapitulating. I object, your Honor.

3 THE COURT: Well, we have been over this  
4 once. It is also cumulative. But I think you can  
5 tell us what you observed.

6 You said you observed Mr. Schreier coming  
7 to the front of the diner and making some telephone calls.  
8 Following the making of those telephone calls, did you  
9 observe anything else happen?

10 THE WITNESS: Yes, sir. At approximately  
11 5:30, Special Agent Alleva, Mr. Schreier and the female  
12 came out of the diner and drove off in Special Agent  
13 Alleva's vehicle.

14 BY MR. PEDOWITZ:

15 Q Was there another person with that group?

16 A Yes, sir, there was.

17 Q And who was that person?

18 A The informant.

19 Q And what, if anything, happened after this  
20 group left the diner?

21 A The group then went to the vicinity of 150th  
22 Street and Horace Harding Boulevard. At that location  
23 they let the female out and she departed the area on  
24 foot.

25 I then followed Special Agent Alleva, the

jgal28

Rabourn-direct

informant and Mr. Schreier to the intersection of Francis Lewis Boulevard and Horace Harding Boulevard.

At that location Mr. Schreier once again went to the public telephone booths and appeared to make phone calls and receive phone calls.

Q And what, if anything, did Mr. Schreier do after he appeared to receive these phone calls?

A After Mr. Schreier received and placed the phone calls, he once again joined Special Agent Alleva and the informant in Special Agent Alleva's Cadillac. Then they drove to the area of 64th Circle and 194th Lane.

Q What, if anything, did you observe at 64th Circle and 195th Lane?

A 194th Lane, and at that location they were joined by another individual.

Q Did you get a good look at that individual?

A No, sir. At that time I did not.

Q What did you observe after this unidentified individual got into Special Agent Alleva's car?

A The group, now consisting of Special Agent Alleva, the informant, Mr. Scheier and the individual, who got into the vehicle at that location at 64th Circle, drove to this vicinity of the La Paella Restaurant.

Q Where is that?

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jgal33                      Rabourn-direct  
a man exit and join the others in Special Agent Alleva's  
car outside La Paella Restaurant and also into which you  
later saw the defendant enter with that other man who  
had exited, did you run a check on the license plate  
of that car?

A        Yes, sir, I did.

Q        And what did you determine?

A        It came back to an individual by the name  
of Jose Jauregui.

MR. KAPLAN:        I am going to object if he  
didn't do it himself.        If he actually did it himself  
I wouldn't object.

THE COURT:        Did you?

THE WITNESS:        Yes, sir.

THE COURT:        All right.

Q        Agent Rabourn, directing your attention to  
November 19, 1973, six days after you placed Exhibit No.  
1 in the safe, were you again on surveillance?

A        Yes, sir, I was.

Q        And what was the purpose of that surveil-  
lance?

A        Once again it was to observe Special Agent  
Alleva.

Q        And when and where did that surveillance take

1 jgal40

Rabourn-direct

200

2 Alleva do then?

3 A At that point Special Agent Alleva returned  
4 to our offices and Mr. Ansin went inside his residence.

5 Q And did Agent Alleva return to headquarters  
6 with any packages on that evening?

7 A No, sir, he did not.

8 Q Now directing your attention to the evening  
9 of November 26, 1973, were you assigned to observe a  
10 narcotics transaction?

11 A Yes, sir, I was.

12 Q Were there other people assigned with you?

13 A Yes, sir, there was.

14 Q Where was this surveillance to take place?

15 A It was to take place in the vicinity<sup>8</sup> of the  
16 Bayona Restaurant on Eighth Avenue between 13th and 12th  
17 Streets.

18 Q And what, if anything, did you observe?

19 A At approximately 10:15 p.m. I observed Mr.  
20 Ansin, driving a black-over-gold 1967 Plymouth, park on  
21 Eighth Avenue.

22 Q And what, if anything, did you observe after  
23 he parked on Eighth Avenue?

24 A I observed nothing further until such time  
25 as Special Agent Alleva arrived at approximately 10:30

1 jgal49 Rabourn-direct

2 of December 4th?

3 A Yes. Once again the bottom edge of it  
4 has been opened and resealed.

5 Q Were you on surveillance duty on the night of  
6 December 7, 1973?

7 A Yes, sir, I was.

8 Q And where was that?

9 A I was in the vicinity of La Bilbaina Restaur-  
10 ant on West 14th Street between Seventh and Eighth  
11 Avenues.

12 Q And what, if anything, did you observe?

13 A At approximately 10:30 p.m. I established  
14 surveillance and at that time I observed the black-over-  
15 gold Plymouth which was previously driven by Mr. Ansin  
16 park in front of the La Bilbaina Restaurant.

17 Q And after you observed the vehicle, what, if  
18 anything, did you see?

19 A At approximately 11:30 p.m. Special Agent  
20 Alleva arrived at the restaurant and went inside.

21 Q And what, if anything, happened after Agent  
22 Alleva entered the restaurant.

23 A At approximately 12 p.m. Special Agent  
24 Alleva advised me through our base radio operator that  
25 an individual --

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Rabourn-cross

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withdrawn.

Did you know the informer?

MR. PFIDOWITZ: Objection, your Honor.

MR. KAPLAN: I am not asking for the name.

THE COURT: Yes or no.

MR. KAPLAN: I beg your pardon?

THE COURT: Yes or no.

A Yes, sir, I did.

Q And did you make arrangements with the informer to appear at that meeting?

A Yes, sir, I did.

Q And did you further make arrangements that the informer and Mr. Alleva would appear at that meeting with Charlie and the girl?

A I didn't. It was arranged --

Q By you?

A -- that Special Agent Alleva would arrive --

Q By you?

A Yes.

Q Did you pay the informer any money on any occasion?

A No, sir.

Q Did you ever pay him any money?

A The informer has never received any funds.

1 jgal67

Rabourn-cross

2 Q Now, had you arrested this informer?

3 A No, sir, I didn't.

4 Q Had anybody arrested him?

5 MR. PEDOWITZ: Objection, your Honor.

6 THE COURT: So far as you know.

7 THE WITNESS: Yes, sir.

8 Q You hadn't arrested him but somebody else  
9 had, is that right?

10 A Yes, sir, that's correct.

11 Q Was this informer subsequently tried for what-  
12 ever charge he was arrested for? If you know.

13 MR. PEDOWITZ: Objection, your Honor.

14 I think this is irrelevant.

15 THE COURT: I have some real reservations  
16 about its relevance. But let's find out if the wit-  
17 ness knows.

18 A He did have a jury trial and he did have a  
19 court proceeding.

20 THE COURT: Do you know that?

21 THE WITNESS: Yes, sir, I know that for  
22 a fact.

23 Q If you know, did he receive a prison sentence?

24 MR. PEDOWITZ: Objection, your Honor.

25 THE COURT: Sustained.

1 jg a 234

2 tomorrow morning at 9:30.

3 (The jury left the courtroom.)

4 THE COURT: Mr. Pedowitz, now that the jury  
5 has been excused, I am going to conduct a hearing out-  
6 side of the jury's presence. Would you call your  
7 witness?

8 MR. PEDOWITZ: Yes, I will. But before  
9 I call the witness, your Honor, may I raise one  
10 preliminary issue? And that is, your Honor, I do not  
11 believe that there has been any factual allegation in this  
12 case to indicate that the confession of the statement  
13 taken by Mr. Batchelder was in any way coerced or in any  
14 way in violation of Miranda.

15 THE COURT: There was a motion made before  
16 trial in this case, and I'm looking back to Mr. Nesland's  
17 affidavit, which I have in front of me at the present time.  
18 Are you aware of that?

19 MR. PEDOWITZ: Yes, I am. Paragraph 2,  
20 I believe.

21 THE COURT: Yes. That's what I am looking  
22 at. Exactly.

23 His point is that there is no specificity  
24 relative to the ultimate charge that was made that the  
25 statements were illegally obtained.

1 jga 235

2 MR. PEDOWITZ: I might also add that you  
3 ruled on that motion and denied the defendant any re-  
4 lief. You ruled on that motion, your Honor, and  
5 denied the defendant any relief.

6 THE COURT: Yes. I recall that. And  
7 I think it was an appropriate ruling as a ruling on a  
8 pretrial motion.

9 Now, it would seem to me we have reached  
10 the trial and counsel has made certain oral state-  
11 ments on the record. I feel that, though his state-  
12 ments are really not much better than those presented  
13 previously, a hearing on the subject would be in order.

14 Now, if what you are saying is that the  
15 defendant should go forward in the first instance and  
16 make a showing, I'll hear you on that.

17 MR. PEDOWITZ: Yes, your Honor. I believe  
18 that is precisely what should happen here in order to join  
19 issue with the government.

20 THE COURT: I would have to say I agree  
21 with Mr. Pedowitz on that point, Mr. Kaplan.

22 MR. KAPLAN: Yes, your Honor.

23 THE COURT: Are you prepared to go forward?

24 MR. KAPLAN: Your Honor, if I -- of course,  
25 the only manner in which I could go forward was to

jga 236

submit Mr. Ansin to testify. Would the government of course stipulate that the testimony, and would the Court direct that the testimony given here is purely for purposes of this examination and shall be not used in any other manner whatever at this trial and that I would put him on the stand, your Honor, solely for the purpose of indicating the events as he recalls them concerning and surrounding the alleged admissions?

If your Honor rules that Mr. Ansin's testimony that he might give for purposes of this hearing may be used in any other matter, then, your Honor, of course I have a problem that requires much more thought.

THE COURT: I'll hear from counsel in a moment. But so the record is clear, I gather that your point is that we have here a statement which is not voluntary or coerced. Is that basically your reason for moving to suppress it?

MR. KAPLAN: Yes, it is.

THE COURT: It would seem to me that the trial court in this case must resolve this question after a hearing in the absence of the jury. I think that was made clear by Jackson vs. Benno, 378 U.S. 360, 1964.

And of course I at such a hearing must make

1 jga 237

2 the determination whether or not the statement, or con-  
3 fession if you want to call it, was voluntary.

4 Now, since it is necessary for the defense  
5 to go forward first, which you have recognized, you  
6 have asked the very logical question relative to the  
7 use of the statements which are made now by the defend-  
8 ant outside of the presence of the jury.

9 I will hear from the government on that.

10 MR. PEDOWITZ: Your Honor, I believe  
11 defense counsel has correctly stated the law. We  
12 will not be able to use any testimony which the defend-  
13 ant may give in this particular proceeding. However,  
14 since the defendant will be sworn in this case and  
15 during this hearing, should it eventuate that the defend-  
16 ant perjures himself, he will be subjected to penalties  
17 and further proceedings.

18 THE COURT: I would suggest that Mr.  
19 Kaplan is aware of that exception, of course, the  
20 perjury exception.

21 MR. KAPLAN: Yes, your Honor, I am aware.

22 THE COURT: Very well. But it has been  
23 made clear that absent false testimony from the stand  
24 here which might thereafter be the subject of an indict-  
25 ment for perjury or the giving of false statements

1 jga 238

2 in this court, the testimony will be used against the  
3 defendant in this trial or any trial where it would be  
4 relevant outside of, as I say, a trial where the  
5 charge was perjury.

6 MR. KAPLAN: Yes.

7 THE COURT: All right. Everyone under-  
8 stand that?

9 You may proceed, Mr. Kaplan.

10 MR. KAPLAN: Your Honor, may I now just ask  
11 for a few moments? I have to now recapitulate and talk  
12 to my client, who really isn't all that aware of what  
13 we are about to do. May I have then a few minutes  
14 to confer with him?

15 THE COURT: Yes, you may.

16 MR. KAPLAN: Thank you.

17 (Pause.)

18 MR. KAPLAN: Your Honor, in keeping with  
19 your Honor's statements and my understanding of this  
20 hearing, I now ask that Mr. Ansin take the stand for  
21 purposes of this hearing only.

22 THE COURT: Yes. Mr. Ansin, you may  
23 step up.

jga 239

P I D R O L U I S A N S I N, called

as a witness in his own behalf, being first duly  
sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Mr. Ansin, are you the defendant in this  
case?

A Yes, sir.

Q Right. What is your mother tongue?

A Mother tongue? Spanish.

Q Would you tell the Court when and where you  
were born?

A February -- sorry. 1945, February 25.  
February 25, 1945.

Q Right. And where were you born?

A I was born in Spain.

Q Could you give us the city or the village?

A Miranda de Ebro.

THE COURT: Where is that in Spain?

THE WITNESS: It is the north of Spain, in  
the Basque country.

Q Did there come a time that you came to  
America?

A That's right, yes.

jga 240

Ans in-direct

Q When was that?

A I come to America like seven years ago.

Q And have you --

A First to Canada.

Q And then to America?

A Yes.

Q And have you lived here ever since then?

A Yes, in New York.

Q Now, I direct your attention to February 20, 1968, about 8:30. Were you arrested by representatives of the Drug Enforcement Agency?

A Yes.

Q And ---

MR. PEDOWITZ: Your Honor, I am sorry to  
this moment, but I would like to have Mr. Dowd  
room.

THE COURT: Yes, of course.

Mr. Dowd, you are excused.

Q Had you worked that day?

A Yes.

Q Where do you work?

A In Brakewell Fabricator in the Bronx.

Q And what is your job there?

A My job is mechanic, welder. I can work

jga 241

Ansin-direct

with all kinds of machines on the job. Mechanic.

Q And what time had you gone to work that morning?

A Five o'clock in the morning.

Q And what time did you get home from work?

A I think around 6:30.

Q Now, at the time of the arrest, would you tell us, if you remember, how many men participated in the arrest?

THE COURT: What was the time that you were arrested?

THE WITNESS: I think it was about 9 o'clock.

THE COURT: Was that in the morning or evening?

THE WITNESS: No. In the evening.

THE COURT: On the 20th of February. All right.

THE WITNESS: I was working.

Q And where were you arrested?

A I was arrested in the park, in the dark.

Q The park near your house?

A Near my house.

Q Were you in the company of other people?

1 jga 242 Ansin-direct  
2 A No, I was alone.  
3 Q What were you doing in the park?  
4 A I start to walk in the park and coming  
5 like seven men. I see big guns --  
6 Q How many men?  
7 A Maybe seven. I don't know for sure.  
8 Q And did they have guns?  
9 A You know --  
10 Q Some of them?  
11 A I think so.  
12 Q All right.  
13 A They say, "Halt, freeze," because I was start  
14 to run because many people, and I think --  
15 Q What happened after that? Did they identi-  
16 fy themselves?  
17 A They ask me who I am -- oh, no. They took  
18 me, put handcuffs and pulled me into the car and they  
19 start to asking me, "Who you are?" And I say, "I  
20 am Pedro Luis Ansin"; and, "You are arrested. Do you  
21 know why?"  
22 "No, I don't know why."  
23 Q And what did they say?  
24 A They start to asking me, "What is your  
25 language?" you know. "You are a resident in the

1 jga 243

Ansini-direct

2 country?"

And I say no.

3 Q You got into a car with seven men?

4 A No. In the car was I think three guys.

5 Q Three. And was there another car?

6 A I think two car more. I don't know, because  
7 lot of people.

8 Q Now, you then drove somewhere in the car,  
9 is that right?

10 A Yes.

11 Q Had they identified themselves?

12 A I think I saw one guy with --

13 Q With identification?

14 A With a plate, something the police.

15 THE COURT: A shield?

16 THE WITNESS: A leather case, in the dark.

17 Q But this was about 9 o'clock. Would you  
18 tell the court, describe, your feelings at that time  
19 when you were in the car? Describe how you felt,  
20 what your thoughts were.

21 A I was thinking, I don't know, even I cannot  
22 speak. I remember I can't talk, I can't say anything.

23 Q Were you so upset and nervous?

24 A Yes.

25 Q Do you remember whether or not you cried?

jga 244

Ansin-direct

A Yes, I cried, yes, a few times, in few different places.

Q All right. What did the agents say to you, if anything, while you were in the car?

A When they in the car, they start to tell me then I was a guy who sold drugs in the street.

Q Who said that, do you know, by name?

A This gentleman who was -- I don't know names.

Q Was Mr. Dowd there?

A And another guy, I don't know, who had -- in his lip, I think he has a sore lip, a cut.

Q Another agent?

A Another agent.

Q It was not Mr. Alleva?

A No, no.

Q Nor was it Mr. Rabbourn, who you saw here?

A No.

Q Did they sit you in the back of the car?

A Yes, with the handcuffs in the back.

Q Where was the handcuffs? In the back?

A No, no. Sorry. Maybe in the front.  
I cannot remember.

Q But at any rate you were handcuffed?

1 jga 245

Ansini-direct

2 A Yes.

3 Q And two men sat in the back with you?

4 A No. One man in the back.

5 Q And the other man drove?

6 A No. Two men sit in the front.

7 Q Was Mr. Dowd in that car, you say?

8 A Yes, sir.

9 Q And he sat where?

10 A On my side, on my left side.

11 Q Right. Did he at any time punch you,  
12 strike you?

13 A Yes.

14 Q What did he do?

15 A He asked me if I arrested in the country, he  
16 started asking me for identification.

17 Q Before we talk about the conversation --

18 THE COURT: Don't lead him now.

19 MR. KAPLAN: I'm sorry.

20 Q Tell us everything that happened as you rode  
21 in that car.

22 THE WITNESS: So they asked me, the first  
23 thing, for identification. I say I have nothing  
24 identification. They asked me for my keys for my  
25 car. And I say, "This over here." I give him my

1 jga 246

Ansini-direct

401

2 keys.

3 But at this time -- they open my car and they  
4 check all my car already. Because one guy asked to  
5 the other, "The car has gasoline? It has gas?" I  
6 say yes.

7 "You think it can make the trip to," I don't  
8 know, "the station" or something? He said yes. So  
9 they took my keys.

10 When they asked me if I have identification,  
11 I say no. So they ask me, "Where is your car license?"  
12 I say, "My driver license, first of all this is not my  
13 car, this is my friend car. And my driver's license  
14 expired, it is no more good, you know."

15 "So you don't have any identification."  
16 I have my Spanish passport and I got, you know, papers  
17 from my job, for the job I have. And --

18 Q This was in the back of the car?

19 A Yes, in the back of the car.

20 Q While it was traveling?

21 A Yes, traveling.

22 Q Now --

23 A And he say, "You are no resident?"

24 "I tell you the truth, I have no residence."

25 Q Who asked you that?

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A In the car.

Q In the car?

A In the car. He start to told me things about "You people come into this country without papers," you know.

Q This was in the back of the car?

A In the back of the car, yes.

Q Did anybody else say anything like that, the two men in the front of the car?

A No, just this man. The other was listening. Sometimes maybe they say what, or tell me again --

Q But they didn't say anything to you?

A No, no, no.

Q By the way, were you ever arrested prior to this occasion?

A No, never.

Q Did you ever have any experience with police officers before?

A No, never.

Q Were you ever accused of a crime before?

A No, never.

Q All right.

Now, how long did the ride take from where you were arrested to the time the car stopped and you got

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jga 248

Ansini-direct

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out?

A Maybe three-quarters of an hour.

Q Right. And all that time Mr. Dowd was in the back seat talking to you, right?

A Yes.

Q And what else did he say besides talking about your immigration status? Did he say anything else?

A Yes. He asked me for a guy. He asked me, "Who called you? Somebody called you tonight?" I say he called me -- yes, called me a guy.

"What did the guy ask you?" And I say, "He told me to come on down."

"Which is the name? What is the name of this guy?" He say, "How looks this guy?" I say, "I don't know who, because I was sleeping when the guy called me and I am not sure he is one of my friends, the name Tony or I don't know who. So the guy told me to come down to the street."

Q Tony you found out is who?

A Yes.

Q Who is Tony?

A I was thinking was Tony.

Q I know. But you now know Tony --

1  
2 A I have another friend his name is Tony,  
3 very close to me, come every night, many times to my  
4 house at night.

5 Q Not Mr. Alleva?

6 A No Mr. Alleva. This guy say that was Mr.  
7 Alleva, because he asked me, "How looks? You know  
8 this guy?" He asked me, "You know this guy?" I  
9 say, "I no sure I know this guy."

10 Q Did they describe Tony to you?

11 A Yes.

12 Q And as a result of the description, did you  
13 come to the conclusion that Tony was whom you now know  
14 to be Mr. Alleva?

15 A For myself.

16 MR. KAPLAN: Are we having a problem with  
17 communication?

18 THE COURT: I don't understand the  
19 response to your last question, because I heard the  
20 witness answer with two words, which I took to say, to  
21 be "for myself," and it didn't make sense to me.

22 MR. KAPLAN: Right.

23 THE WITNESS: The guy told me --

24 Q When you say --

25 A -- "The guy he called you, his name is Tony?"

1 jga250                      Ansin-direct

2                      Q            Who asked you that question?

3                      A            This man over here.

4                      Q            Mr. Dowd?

5                      A            Right.

6                      Q            What did you answer him?

7                      A            I say, "Yes, the name is Tony.            But I have

8 a friend, the name is Tony.            That was the finish.            I

9 have a friend, his name is Tony."

10                     Q            And what did he answer?            Anything?            Mr.

11 Dowd, what did he say?

12                     A            No.            At this point he start to ask me differ-

13 ent questions.

14                     Q            Now, before --

15                     THE COURT:            Just one moment.            I want to

16 hear that question and answer again, please.

17                     (Record read.)

18                     Q            Now, were you crying at this time?            Were you

19 physically weeping?

20                     A            Yes.

21                     Q            Did Mr. Dowd strike you at all?

22                     MR. PEDOWITZ:            I object, your Honor.            It

23 seems to me that he is leading.

24                     A            As far as I was concerned he was using not

25 too good words.

1 jga231 Ansin-direct  
2 THE COURT: He was saying nasty things to you?  
3 THE WITNESS: Yes.  
4 THE COURT: Did he do anything else?  
5 THE WITNESS: No. By talking.  
6 BY MR. KAPLAN:  
7 Q But it had an effect on you?  
8 A Yes, very bad.  
9 Q Would you tell the Court what language did  
10 Mr. Dowd use towards you or in his conversation  
11 with you in the back of the car as the car was travel-  
12 ing? What words was he using? And you can use, if  
13 you feel better, first letters --  
14 THE COURT: What did he say?  
15 Q -- for the Court's sensibilities.  
16 What did he say?  
17 A I don't use, ever, bad words anyway, you know.  
18 Q What did he say?  
19 A (No response.)  
20 Q Did he threaten to hit you?  
21 A Yes. He tried to, like I will feel very  
22 bad, you know, try to told me that "These guys come into  
23 this country and are living with a woman and who has no  
24 husband."  
25 Q But did he --

1 jgs252

Ansinn-direct

2 MR. PEDOWITZ: Your Honor, I object to  
3 this because I think we have gone over this now and I think  
4 the witness has understood what his lawyer is trying  
5 to say and I think the lawyer is now trying to put words  
6 in his mouth.

7 THE COURT: Yes.

8 What did Mr. Dowd say? You said he said  
9 nasty things. What did he say?

10 THE WITNESS: I cannot, you know -- I  
11 can't remember exactly the words used. They talk to  
12 me bad. I can't remember exactly what -- about what.  
13 They don't call em -- they don't call me bad words, like --  
14 BY MR. KAPLAN:

15 Q They didn't call you bad names, did they?

16 A No, absolutely not.

17 Q Do you mean to tell the Court that the  
18 words were threatening words, that that scared you, that  
19 worried you?

20 A Yes.

21 MR. PEDOWITZ: Objection.

22 MR. KAPLAN: I know that is leading,  
23 your Honor, but it gets a little difficult.

24 Q But at no time did Mr. Dowd call you dirty  
25 names or nothing like that?

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jga253                      Ansin-direct

A            No, no.

THE COURT:        You were frightened.

THE WITNESS:      Yes, very frightened.

THE COURT:        Let's go from there.

Q            Before you got in the car, or up to this point, did Mr. Dowd or any of the people who arrested you tell you that you had a right not to answer the questions?

A            It was like seven people alogether at the same time.

Q            I understand there was confusion.    But, do you remember, did anybody tell you you don't have to say anything?

A            I don't remember.

Q            Did anybody say to you that you could have a lawyer present and that if you said anything, any sort of warnings --

A            I don't remember.        They say something like that.    I tell you, I can't listen because I was too sad.

THE COURT:        In other words, you were in a state where, even if they said it, you wouldn't remember it today?

THE WITNESS:      Really that's it.        I tell you

jga254

Ansini-direct

1 something. I say, "Will you please to go my apartment  
2 and tell it to my friend that I am arrested?" I can  
3 even give you my telephone."  
4

5 Q You didn't remember your phone number?

6 A I can't remember my phone number. I give you  
7 a wrong number. I gave you a different number.

8 Q Who did you give the wrong number to? Mr.  
9 Dowd?

10 A I give you -- my number is 5 -- 454-49 --  
11 I can't remember now.

12 Q But it was the wrong number?

13 A The 2 and the 5 I put in the front.

14 Q Okay. Did there come a time that you  
15 arrived at a building?

16 A Yes.

17 Q Do you remember what that building was?

18 A A big building.

19 Q Was that 57th Street?

20 A I don't know where it is. A building  
21 that they took me out the car.

22 Q They took you out of the car?

23 A And put me in an elevator.

24 Q And where did you go?

25 A Upstairs.

Q What time was this now, approximately?

A Maybe 10 o'clock, maybe 10:30.

Q All right.

Now, then where did they place you? Tell the Court what happened when you got up --

A When I was there, buys with gun in the belt, and people in small jails; there are people, full of people, you know. They start to -- start to asking me things again. And I remember one, like told me, "Maybe your wife" -- these buys told me, "Maybe your wife" --

Q Who? Mr. Dowd?

A Yes. He said, "Somebody say that you are selling drugs."

Q This is what Mr. Dowd said to you?

A "I never sold drugs."

"But why do you think you are here?"

"I don't know why I am here."

And the guy said, "Maybe your woman say that to get rid of you." That's what the guy told me, things like that, many things like that.

Q Were you in jail now, behind bars?

A No, I was not behind bars.

Q You were in a room?

1 jga256 Ansin-direct  
2 A I was with the pants down and they take me  
3 my fingerprints.  
4 Q You didn't have any pants on?  
5 A No. They took all the money I have.  
6 Q Well, did they physically take your pants  
7 away?  
8 A Yes.  
9 Q And you were in shorts?  
10 A Yes.  
11 Q In shorts?  
12 A Yes.  
13 Q How about the top? Did you have a shirt  
14 on?  
15 A They took away my coat, and I think I was  
16 in a shirt, yes, in underwear.  
17 Q In underwear?  
18 A I don't know. I think I was in shirt.  
19 Q But no pants.  
20 A No pants, no.  
21 Q And there were other people in the room.  
22 A No. The other people -- that was in a  
23 different room. The other people were --  
24 Q Did they give you your pants back while you  
25 were in that room?

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Ansini-direct

2 A Yes.

3 MR. PEDOWITZ: May I simply inquire as to  
4 where we are right now in his testimony.

5 THE COURT: Yes. I have the same  
6 problem. I have him having been taken to a building at  
7 about 10 to 10:30 p.m., and really it is only from something  
8 which you said, Mr. Kaplan, that I have concluded that  
9 the building must have been in narcotics headquarters on  
10 57th Street.

11 MR. KAPLAN: Right. And I'm guessing,  
12 your Honor. I don't know. I just suggested it.  
13 I don't know where they took him.

14 THE WITNESS: A big building.

15 MR. PEDOWITZ: Is this prior to the time  
16 the defendant was taken to jail?

17 THE COURT: I would suggest it is.  
18 Apparently he was apprehended and, after a 3/4-of-an-  
19 hour ride, arrived at the particular place in question.

20 Gentlemen, it is apparent to the Court that  
21 we are not going to finish the hearing tonight. It  
22 is now 20 minutes of 5 and I have counsel waiting in  
23 another case.

24 I am going to direct that you return and that  
25 we resume this hearing tomorrow morning at 9 a.m.

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2 MR. KAPLAN: Yes, sir.

3 THE COURT: Thank you.

4 MR. KAPLAN: Thank you, your Honor.

5 (Adjourned to Thursday, December 12, 1974,  
6 at 9:00 a.m.)

1 JCCG : Ansin-direct

2 UNITED STATES OF AMERICA,

3 74 Cr. 224

4 PEDRO LUIS ANSIN,

5  
6 December 12, 1974  
7 9:00 a. m.

8 (Trial resumed.)

9 THE COURT: Good morning, gentlemen.

10 We will resume the suppression hearing, which was  
11 recessed yesterday at twenty of five.

12 Mr. Ansin?

13 P E D R O L U I S A N S I N, resumed.

14 THE COURT: Mr. Ansin, you are going to be continu-  
15 ing your testimony under the same oath as was administered  
16 yesterday when you started.

17 The testimony that you are going to be giving and  
18 which you have been giving will not be used against you in  
19 any proceeding other than a possible perjury proceeding in the  
20 event you do not tell the truth during this hearing. Do you  
21 understand that?

22 You may resume, Mr. Kaplan.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. KAPLAN:

25 Q What time was it when you first arrived at this

1 jgcg 2

Ansini-direct

2 big building where you went up in the elevator?

3 A About 10:30.

4 Q To recapitulate for just a moment --

5 THE COURT: I remember that he wound up without his  
6 trousers and in his shorts. Let's pick it up at that point.

7 MR. KAPLAN: Fine.

8 Q Now, as you sit here now, do you have any distinct  
9 memory of anybody telling you, giving you your rights, your  
10 right not to testify or your right to a lawyer or a lawyer  
11 present should you decide to testify? Do you remember anyone  
12 saying that?

13 A Again, at this point nobody told me that.

14 THE COURT: You can't remember that?

15 THE WITNESS: I think nobody has asked me for that,  
16 told me that, and I can --

17 THE COURT: All right.

18 Q How long were you in this building before they took  
19 you some place else?

20 A Maybe another hour and a half, two hours.

21 Q Where were you sitting? Where did they have you?  
22 What type of room was it?

23 A The one who start asking me for names, like "Do you  
24 know this guy? Do you know this guy?," I never seen these  
25 people, like Pepe Balco and many, many names that I never meet

1 jgcg 3

Ansini-direct

2 these people and I never hear of them.

3 Q How many people asked you questions at different  
4 times?

5 A I think at this time two gentlemen.

6 Q One was Mr. Dowd, the man who was sitting here?

7 A Yes.

8 Q And do you know the name of the other man?

9 A The other guy was a man who take my fingerprints,  
10 and he asked me nothing.

11 MR. PEDOWITZ: Your Honor, can we have that answer  
12 read back?

13 THE COURT: Yes.

14 (Record read.)

15 A (Continuing) He was doing his job, you know.

16 Q Was anything else said to you, specifically con-  
17 cerning your immigration status, during the time you were  
18 in this building, if anything?

19 A They told me about the 20 people who were in jail,  
20 you know, and they start to told me that "if you know these  
21 numbers of these people, you try to told us about that, maybe  
22 we have concern about this and maybe we'll help you, we'll  
23 help you."

24 Q And who said that to you? Do you know his name?

25 A I don't know the name. I think this is the man,

1 jgcq 4 Ansin-direct 417

2 here.

3 Q Mr. Dowd?

4 A Yes.

5 Q Did he show you any papers concerning your immigrant  
6 status at this time?

7 A No.

8 Q No papers? Just spoke?

9 A Yes, just spoke.

10 Q Did they tell you at this point that you had a right  
11 to a lawyer or that you didn't have to answer their questions?

12 A I don't remember.

13 Q Now, there came a time you left the building?

14 A Yes. They search me and you know, take my money  
15 and my keys and put in the envelope, and they asked me for  
16 sign onepaper, and I say I can't sign the paper because I  
17 don't know what is in here.

18 So the guy told me, "Don't worry, because it is your  
19 money and your keys." So I sign the paper.

20 Q All right. Now, did there come a time that you were  
21 taken from that building?

22 A Yes.

23 Q What time was this when you left that building?

24 A I don't know, because I had no watch.

25 Q I know. But approximately.

1 jgcg 5

Ansini-direct

2 A Maybe about two -- about one o'clock, one o'clock.

3 Q And how many men took you out of the building?

4 A Mr. -- this gentleman and --

5 Q Indicating Mr. Dowd.

6 A -- and another man, he has sore lips, you know, and  
7 yellow hair.

8 Q Did you leave the building and enter a car?

9 A A car.

10 Q And the car was parked in front of the building?

11 A No. I think the car was parked under the building.

12 Q And did they talk to you as you were going down the  
13 elevator?

14 A Yes.

15 Q What did they talk about?

16 A They -- nothing, just nothing. I asked him to call  
17 to my house -- because my girl friend Sandra was working in  
18 the hospital, you know, so I give my telephone -- and say I  
19 am here, you know?

20 Q When was that? When did you ask them --

21 A I was in the building.

22 Q How many times did you ask them to make this call?

23 A I think three times.

24 Q Now, on each occasion did you give them a phone  
25 number?

1 jgcg 6 Ansin-direct

2 A Yes. I give them my phone number, but I don't know--  
3 I nervous. I don't know if I give it good or not. I think --  
4 I don't know.

5 Q Now, the three times you asked them to call Sandy,  
6 or call your home, once was in the park, is that right, I  
7 think you said, when you were arrested?

8 A Yes, yes. I say I would like to make a phone call.

9 Q And what did they say?

10 A They say, "You have time to do it."

11 Q Did they ever let you make the phone call?

12 A They told me, "Maybe later."

13 Q I know. But in fact did they permit you to make the  
14 phone call?

15 A No, no, no, no.

16 Q How many times did you request to make a phone call?

17 A I asked, and never told me --

18 Q Up to the time you were leaving the building, that  
19 is.

20 A I don't know. One more time.

21 Q Just once?

22 A No. I don't ask any more.

23 Q When you left the building with the two agents, they  
24 drove you some place, is that right?

25 A Yes.

1 jgcg 7

Ansini-direct

2 Q Where did they take you?

3 A I think under the west side.

4 Q I don't mean the route. Where did you go?

5 THE COURT: To a building?

6 THE WITNESS: Yes, to a building.

7 THE COURT: Was it this building?

8 THE WITNESS: No, not this building, no.

9 THE COURT: Was it a building with bars, a jail?

10 THE WITNESS: A jail, yes.

11 THE COURT: Under the West Side Highway?

12 THE WITNESS: The West Side Highway.

13 THE COURT: All right. And when you got to this  
14 building under the West Side Highway, the jail, what happened?

15 THE WITNESS: They asked me to take off my clothes  
16 and, you know, they give me pants and shirt, and they was  
17 waiting there like for another one hour or two hours, I don't  
18 know exactly, and they at the desk, and coming two officials  
19 from the jail and send me to the cell on the first floor.

20 THE COURT: About what time was that?

21 THE WITNESS: I think it was like three o'clock in  
22 the morning. You know --

23 THE COURT: From the time you got to the jail until  
24 the time you left that jail, did anyone question you?

25 THE WITNESS: No. No, sir. No.

Ans in-direct

THE COURT: Did there come a time when you left the

THE WITNESS: Yes.

THE COURT: About what time was that?

THE WITNESS: Was in the morning, about, I think,

THE COURT: And where were you taken?

THE WITNESS: They took me to the building, I think --

THE COURT: You think it is this building? Some

THE WITNESS: I think it was -- they give me a ride

THE COURT: Not far, though?

THE WITNESS: No, not far. No, not far.

THE COURT: During the time from when you left the

THE WITNESS: Yes, they ask me again. The two

THE COURT: Did they say to you that you had certain

THE WITNESS: No. We don't talk about this. Just

1 jgcg 9

Ansinn-direct

2 talking about -- asking me for names, names.

3 THE COURT: Asking you for names? They didn't tell  
4 you about the fact that you had a right to remain silent?

5 THE WITNESS: I don't want to be against that. But  
6 maybe, maybe, maybe they told me about it.

7 THE COURT: Maybe. All right.

8 THE WITNESS: I don't want to say they don't told  
9 me. Maybe they told me. But they asked me so fast. They  
10 asked me -- almost two days without sleep. Because I was  
11 working. Five o'clock in the morning I have to wake up, you  
12 know. So I was completely without sleep.

13 THE COURT: On that ride, did you give them any  
14 names? Did you tell them you were dealing in narcotics, any-  
15 thing like that?

16 THE WITNESS: No. I say, "I don't know these names.  
17 I don't know these people."

18 THE COURT: Now you got to this building.

19 THE WITNESS: Yes.

20 THE COURT: During the time you were in this building  
21 did anybody ask you any questions?

22 THE WITNESS: I was -- they took me to the office  
23 and I was like involved four people -- I don't know, four or  
24 three. Come in another man for Immigration, and start to ask  
25 me things, you know.

1 jgcb 10

Ansin-direct

2 THE COURT: And do you know who these men were?

3 THE WITNESS: No. Men from Immigration. They take  
4 me --

5 THE COURT: They took you to an office with a desk  
6 and people in it?

7 THE WITNESS: Yes. In front of the desk was the man  
8 with white hair, short hair, tall man. He start to asking me  
9 things. Before that, before that, this man --

10 MR. KAPLAN: Mr. Dowd.

11 THE WITNESS: -- he told me, "You see the people in  
12 here? One of these people has to be in jail forty years. You'll  
13 be in jail forty years if you don't told me what more or less  
14 you know about the things you did."

15 MR. PEDOWITZ: Your Honor, I had difficulty hearing  
16 that answer.

17 THE COURT: Mr. Greenberg.

18 (Record read.)

19 (Discussion off the record.)

#3

20 BY THE COURT:

21 Q Mr. Ansin, how many years did you say this one man  
22 said somebody was in jail for?

23 A This gentleman told me that these people, they don't  
24 help the government, they don't say the truth or these things,  
25 they have to be in jail for four years. "In your case" this

1 jgcg 11

Ansini-direct

2 is because, I say, you know, I was very scared, because I  
3 despair, I am Basque, I was teaching -- I am a teacher, and I  
4 was always against the government, because the Basque people  
5 are against the government, and the guy say, "You are against  
6 the government and," you know, "I want to send you back," you  
7 know?

8 Q All right. Now you are in the office here at the  
9 courthouse, During the time you were in the office, did  
10 people ask you questions?

11 A Yes.

12 Q Before they started to ask you questions, did they  
13 say anything to you about that you had certain rights?

14 A I think Mr. -- the big guy, I think he told me that.  
15 I believe he told me that.

16 Q What did he say, as far as you can remember?

17 A I think they asking me seven or ten questions, and  
18 I say that -- they left and start again to asking me things.  
19 And then somebody call and again he left, and then the  
20 Immigration man coming down, and he start to asking me things  
21 for Immigration, where I come from, what is my occupation,  
22 where I am working, and all these things, you know, "You don't  
23 have papers"; and the man coming back and asking me like ten  
24 questions. And after that I start to tell what happened with  
25 me, what I did, and all those things.

Q Before you started to tell them what you did --

A Yes.

Q -- did they tell you anything about that you had the right to remain silent, that you had the right to a lawyer --

A I think they told me. But I was so afraid, I was so -- you know, even -- I am sure he told me about a lawyer, because I understand, I understand the word "lawyer," so I am sure he told me that. But I was so afraid, I was so scared, you know, I said, yes, yes, and I say what I did. It just --

Q So, as I understand it, your testimony is that these people at the office, before they started to ask you questions, told you certain things about --

A Many, many.

Q -- rights, lawyers, whatever.

A Yes.

Q And you kept saying yes, yes, and you were afraid. And then, after they finished telling you all this and you said yes, yes, what happened?

A He start to asking me -- you want to say, you want -- nobody -- nobody try to beat you or nothing. You want to say what you did, what is -- what these people accuse you about. something, you want to tell the truth, you want to say, you want to collaborate with us, because we be good for you, we try to help you. I try to say what happened.

1 jgcg 13                      Ansin-direct

2            Q     And then you told them what happened?

3            A     Yes.

4            Q     Was there anybody, like this gentleman, taking it  
5 down?

6            A     I don't know. Even I don't know. I don't look any-  
7 body. I say -- because, you know, I said --

8            Q     In the office there, did they ask you to sign any  
9 piece of paper?

10           A     No, no, no.

11           Q     You didn't sign any piece of paper?

12           A     No, no.

13           Q     Did they give you anything to read?

14           A     No, no.

15           Q     They just made this statement, you said yes, yes,  
16 you were afraid, they then asked you questions, and you answered  
17 the questions.

18           A     Yes.

19 BY MR. KAPLAN:

20           Q     Did they tell you that if you answered their  
21 questions that they would permit --

22           MR. PEDOWITZ: Your Honor --

23           THE COURT: Sustained.

24           MR. KAPLAN: Because of the leading, Judge?

25           THE COURT: Yes.

1  
2 THE COURT: Perhaps I lulled you into it because to  
3 a certain extent I suppose I led the defendant, the witness.  
4 But at this point I think I would have to look to counsel's  
5 objection.

6 MR. KAPLAN: Yes.

7 Q Mr. Ansin, did they make any promises at all to you?

8 A They did make me promise.

9 Q Would you tell the Court what, if anything, was  
10 promised and who made the promises? What did they say?

11 A They say -- many people in jail collaborate with  
12 the police. You -- you can -- maybe we can put in -- we can  
13 put you out the jail and you can work for us, and you do that,  
14 you know, you don't even would be in jail. And you, you know --  
15 maybe you will have your own papers.

16 And I say my -- you know, I think for always I am  
17 lost, for always I am knocked down. Like if I sent to Spain,  
18 maybe I have to be in jail, where over here I say what happened,  
19 maybe I have to be in jail over here.

20 So I say -- they asked me for names again. They  
21 asked me for people. I say I work in the restaurant. I am  
22 the kind of guy -- my girl friend is a dancer. I am the kind  
23 of guy, I know many people and many people are very friendly  
24 with me and, I tell you, coming to me, in these flamenco dancers,  
25 in these clubs, for anything, you know. They told me, "You

1 jgcq 15

Ansini-direct

2 want" --

3 MR. KAPLAN: I don't think we have to go into that.

4 Q Let me ask you one thing more. Where there any  
5 promises in addition to the promise of no jail? Did anybody  
6 else make any promises to you if you answer questions?

7 MR. PEDOWITZ: Your Honor, I don't think that --

8 THE COURT: I don't accept that as a proper char-  
9 acterization. That may be a conclusion you could draw from  
10 the testimony.

11 MR. KAPLAN: I'll rephrase it, your Honor.

12 THE COURT: Please.

13 Q Did the immigration man talk to you?

14 A Yes.

15 Q Was this before the paper --

16 A I think -- no. I think the immigration man was  
17 listening --

18 Q Did the immigration man ever talk to you?

19 A Yes.

20 Q Would you tell the court what, if anything, he said  
21 to you and when was it in relation to the questions that were  
22 asked?

23 A Well, now, no. They don't -- they don't ask me  
24 about things for the case, just for immigration matters.

25 Q Right. And what was it, if you know?

1 jgcq 16                      Ansin-direct

2            A     Asking me, "You have papers? Where is your address  
3 over here and in Spain?"

4            MR. PEDOWITZ: I would object to this on the  
5 grounds of relevance.

6            THE COURT: Well, it may be utilized by counsel to  
7 argue that by these questions he was put into a state of mind  
8 where his actions were not voluntary. I suppose it could lead  
9 to something probative. It is not direct, but it is suf-  
10 ficient for me to take it here.

11           MR. PEDOWITZ: I would request, your Honor, that you  
12 ask for some time sequence here so we can lay some foundation.

13           THE COURT: That is a reasonable request.

14           Q     Would you tell us when the immigration man spoke to  
15 you?

16           A     It was in the same room, at the same time, with  
17 everybody in the room.

18           Q     Do you know the time, what time this was?

19           MR. PEDOWITZ: Your Honor, I still --

20           THE COURT: Yes. I am going to ask a question, if I  
21 can.

22 BY THE COURT:

23           Q     Did the immigration man talk to you while you were  
24 in that office here at the courthouse?

25           A     Yes.

1 jgcg 17 Ansin-direct

2 Q Did he talk to you before or after the man told you  
3 that you had the right to remain silent, or whatever, and  
4 talked about a lawyer and your right to a lawyer?

5 A This man, no. This man no talk to me about any  
6 lawyer, this man, no.

7 Q No. But did he talk to you before or after the other  
8 man talked to you about a lawyer?

9 A I think he talked to me after.

10 Q Thank you.

11 MR. PEDOWITZ: In that case, I will object on the  
12 grounds of relevance.

13 THE COURT: Overruled.

14 MR. KAPLAN: I have no further questions.

15 Oh, yes, I do.

16 Q What time was this? Do you have any idea?

17 A Maybe was -- maybe it was one o'clock, because when  
18 I come down, everybody was taking lunch already and they give  
19 me a piece of meat and coffee.

20 THE COURT: In other words, when they were talking  
21 to you, I think you testified that you came here to this  
22 building at about 10:30 in the morning, and this questioning  
23 that you've just talked about in the office was done, you say,  
24 about what time?

25 THE WITNESS: Was about maybe 11 over here, this

1 jgcg 18 Ansin-direct 431  
2 building, and I come down maybe about 1 o'clock again in jail.  
3 THE COURT: You came back to the jail at one  
4 o'clock?  
5 THE WITNESS: Yes, I think about one.  
6 THE COURT: So you were here in this building from  
7 about 11 in the morning until about one o'clock in the after-  
8 noon.  
9 BY MR. KAPLAN:  
10 Q Did you appear before a judge while you were in  
11 this building?  
12 THE COURT: Or a magistrate.  
13 MR. KAPLAN: A magistrate or a judge.  
14 A No, I don't see nobody.  
15 Q Did you eventually appear before a judge after?  
16 A When they give me -- when they give me a bail, I  
17 was in a different court, over here I mean --  
18 Q When was that?  
19 A Was, I think, maybe two weeks later or one week and  
20 a half later.  
21 Q No, no. I mean, did you appear before a judge that  
22 day, the day that you were in this building?  
23 MR. PEDOWITZ: We will concede that he did appear  
24 before a magistrate at about two o'clock.  
25 MR. KAPLAN: Two in the afternoon?

1 jgcg 19

Ansin-direct/cross

2 MR. PEDOWITZ: Yes.

3 MR. KAPLAN: No further questions.

4 THE COURT: All right. Fine.

5 CROSS-EXAMINATION

6 BY MR. PEDOWITZ:

7 Q Mr. Ansin, on the day you were arrested, in the  
8 evening, you don't recall whether the officers gave you your  
9 Constitutional Rights, is that your testimony?

10 A Was many people, and they were making a lot of noise,  
11 and if they told me, I don't remember.

12 Q You simple don't recall.

13 A No.

14 Q And you weren't physically beaten, were you, in the  
15 car on the way to the office?

16 A Just put in, and, you know, my handcuffs was very,  
17 very, very close. I have, you know -- I had marks for that.

18 Q You were handcuffed.

19 A Yes.

20 Q And there came a time the next day when you arrived  
21 in the U. S. Attorney's office, is that correct?

22 A Yes.

23 Q And at that time you were interviewed by a man with  
24 short hair?

25 A Yes.

1 jgcg 20 Ansin-cross

2 Q That's your testimony?

3 A Yes.

4 Q And at that time did he tell you that he was an  
5 Assistant United States Attorney and that you had been arrested  
6 for narcotics violation?

7 A First, I don't know what that mean, Assistant  
8 Attorney. I'm not familiar with all these things, you know.  
9 Just he told me things and he told me that -- the agents told  
10 me I was arrested for narcotics.

11 Q And didn't Mr. Batchelder also tell you? Mr.  
12 Batchelder was the man who interviewed you, the man with the  
13 short hair.

14 Did he also tell you at that time that you had been  
15 arrested and you had been arrested for narcotics violation?

16 A I think yes.

17 Q And did he also tell you that in a few minutes he  
18 was going to take you down before a United States Magistrate,  
19 who was going to fix bail in your case?

20 A (No response.)

21 Q You don't recall?

22 A No.

23 Q Did he tell you that you have a constitutional right  
24 to refuse to answer any of his questions?

25 A Maybe yes.

1 jgcg 21

Ansini-cross

2 Q And did he ask you did you understand that?

3 A I don't think that they asked me if I understand,  
4 because very easy for him to told me, "You don't understand,  
5 we bring a man to translate for you and interpret." I don't  
6 think he told me that.

7 Q Did you ask for an interpreter?

8 A No, no.

9 Q Did you understand what he said when he said you  
10 had "a right to remain silent?"

11 A I think yes.

12 Q Do you understand that that means that you don't  
13 have to say anything?

14 A No, no, I don't understand that.

15 Q What do you understand that to mean?

16 A I was so afraid, I was so -- I'm sure I even listen  
17 to --

18 Q And do you recall him saying to you, "You have an  
19 absolute right to remain silent, and if you choose to answer  
20 any questions, any statement you do make can be used against  
21 you in a court of law. Do you understand that?"

22 Do you recall him saying that?

23 A No sir, no sir, no sir.

24 Q And do you recall him saying, "You have a right to  
25 consult an attorney and to have an attorney present during

1 jgcq 22

Ansin-cross

2 this interview. Do you understand that?" Do you remember  
3 that?

4 A Maybe, maybe, maybe --

5 Q Didn't you testify a few minutes ago that he told  
6 you that you have a right to an attorney?

7 A I tell you that I answer -- I remember I answer all  
8 the questions yes. But was like -- for me was, like I say,  
9 even if I say wrong -- for me was like something to finish,  
10 to go to the end right away.

11 Q Mr. Ansin, didn't he also say to you, "If you do  
12 not have funds to retain an attorney, an attorney will be  
13 appointed to represent you and you do not have to answer any  
14 questions until this appointed attorney is present and you can  
15 consult with him."? Didn't he say that?

16 A Maybe he told me, but I don't know.

17 Q You answered yes to that, though, didn't you?

18 A I told you before, I answered yes to all the ques-  
19 tions.

20 Q And then didn't he say, "Understanding your rights  
21 as I've explained them to you, do you want to give me some  
22 information at this time about your background and about your  
23 version of the facts?"?

24 A He told me about that. I understand this question.  
25 I say yes.

Q At that time you answered a number of questions, didn't you?

A Yes, that's true. That's true.

Q And when you answered the questions, you were giving the truth, weren't you?

A Yes.

Q You were telling the truth?

A I believe I told the truth, as I said before.

Q You never requested an interpreter?

A No.

Q You do understand English, don't you?

A Sometimes yes. I don't know -- when you try to tell me different -- tell me -- told me something that is different, different, I don't understand.

Q You understood the questions that I asked you, didn't you?

A More or less, yes.

Q More or less? Or you understood them?

A Not completely. That's true.

BY THE COURT:

Q Did you ever tell these agents that you didn't understand what they were asking?

A Sometimes I had to repeat the -- to repeat the same thing four or five times because they don't know -- they don't

1 jgcy 24

Ansini-cross

2 know what I try to tell them.

3 Q Did you understand what they were telling you?

4 A No. Many times no.

5 Q Did you ask them to repeat it, "Say it again, sir.  
6 Tell me the question again, sir."?

7 A No, no, no, no.

8 Q You did not.

9 A No.

10 BY MR. PEDOWITZ:

11 Q You wouldn't have given an answer if you didn't  
12 understand the question.

13 A They asked me many things at the same time.

14 Q And you gave them answers to the questions.

15 A I answered some of them. Some of them I answered  
16 sometimes.

17 Q You understood the questions, didn't you?

18 MR. KAPLAN: I object, your Honor.

19 THE COURT: Sustained.

20 A No, no, no.

21 THE COURT: It has been asked and answered.

22 MR. PEDOWITZ: I have no further questions.

23 MR. SCHAFER: One moment.

24 (Pause.)

25 BY MR. PEDOWITZ:

1 jgqcg 25

Ansinn-cross

2 Q Did you answer any questions you did not understand?

3 A I think yes. I think yes.

4 Q Do you remember what --

5 A Maybe I think was -- I answered. That's true. I  
6 say, many of these things, maybe, that would take time to  
7 think about, I say yes.

8 Q And at the time that you were answering these  
9 questions, you were explaining what you did, isn't that correct?

10 A Yes.

11 MR. KAPLAN: I object, your Honor. I object to  
12 the form.

13 THE COURT: Sustained.

14 A (Continuing) After they asking me the questions --

15 THE COURT: No. I'll strike that answer.

16 Q You told the truth, is that correct?

17 A I think I told the truth, because I say what  
18 happened.

19 Q And at the time you were giving the answers, didn't  
20 you believe that you were explaining that you didn't do any-  
21 thing wrong?

22 MR. KAPLAN: Objection, your Honor.

23 THE COURT: Sustained.

24 A I don't understand the question.

25 Q Didn't you say in your statement that you really

1 jgcy 26

Ansini-cross

2 didn't sell cocaine?

3 MR. KAPLAN: I object, your Honor.

4 THE COURT: Sustained.

5 MR. PEDOWITZ: I think it is relevant to the defen-  
6 dant's state of mind at the time he was giving the statement.

7 THE COURT: All right. I'll take it for that pur-  
8 pose. This is a limited hearing. I'll hear the answer.

9 MR. PEDOWITZ: I understand Mr. Kaplan's objection,  
10 of course, that the contents of the statement are of no im-  
11 portance.

12 THE COURT: You are not offering it for the truth  
13 of the matter asserted.

14 MR. PEDOWITZ: Not at all, your Honor.

15 THE COURT: And it is not being received for that  
16 reason, only because state of mind is in issue.

17 MR. KAPLAN: May the question be reread, your Honor?

18 THE COURT: Yes.

19 (Question read.)

20 A When I start my statement, I say I don't sold any  
21 cocaine. I start with that in my statement.

22 Q And why did you say that?

23 A Because I never sold cocaine.

24 Q That's because you believed, didn't you --

25 A I believe --

2 Q --that you had done nothing wrong?

3 A I believe it myself that I never sold cocaine.

4 Q You never sold cocaine.

5 A That's true.

6 Q And that is because you never received money?

7 A I never sold cocaine.

8 Q But you did hand cocaine to the agent.

9 MR. KAPLAN: I object.

10 A I don't sold any cocaine.

11 MR. KAPLAN: If the question was well taken because  
12 of the state of mind, then that's understandable. And if he  
13 didn't believe he sold it, and selling is a conclusion, then  
14 that is the answer, Judge.

15 THE COURT: I recognize he is charged with distri-  
16 bution.

17 MR. KAPLAN: Which he is not acquainted with.

18 THE COURT: That's right. But, under the circum-  
19 stances, I don't think it adds anything to this hearing to go  
20 into that.

21 MR. PEDOWITZ: Your Honor, I merely want to show  
22 through this line of questioning that at the time the defendant  
23 was speaking to Mr. Batchelder he was under the impression  
24 that he was giving an exculpatory statement, and therefore,  
25 your honor, I believe that it is relevant to the question of

1 jgcg 28 Ansin-cross

2 coercion.

3 THE COURT: Let me ask him one question.

4 MR. PEDOWITZ: Certainly.

5 BY THE COURT:

6 Q Did you at any time say to these men that "I did  
7 wrong, I broke the law."? Did you say anything like that to  
8 them?

9 A No. I think never I said something like that. You  
10 know, I start in my statement telling them that I never sold  
11 any drugs. But, you know, I -- these things, like for a  
12 friend, like for something -- I had -- I take nothing for  
13 these things. Just like you ask me, like this, for nothing,  
14 all I did. Maybe I stupid, maybe, you know.

15 MR. PEDOWITZ: Thank you, your Honor. I have no  
16 further questions.

17 THE COURT: Mr. Kaplan?

18 MR. KAPLAN: I have no questions.

19 THE COURT: You may step down.

20 (Witness excused.)

21 MR. KAPLAN: With your Honor's permission.

22 Your Honor, as of course the Court knows, even  
23 voluntary confessions and admissions are inadmissible. And  
24 involuntary confessions, under the present law, have been those  
25 that were given in violation of the Miranda rule. Post-

1 jgcy 29

2 indictment confessions --

3 MR. PEDOWITZ: Your Honor, at this time are we making  
4 a preliminary motion? Because Mr. Dowd hasn't been heard  
5 from.

6 THE COURT: That's correct. I am prepared to hear  
7 Mr. Dowd.

8 MR. KAPLAN: I am sorry. I withdraw that.

9 MR. PEDOWITZ: Your Honor, at this time I would make  
10 a motion on the grounds that as a matter of law there has been  
11 no coercion shown in this particular case. The standard used  
12 in this circuit is whether an examination of all the circum-  
13 stances discloses the conduct of the law enforcement officials  
14 was such as to overbear the defendant's will to resist and  
15 bring about confessions not self-determined.

16 And, your Honor, questions with regard to cooperation  
17 are not considered overbearing on the defendant. That is made  
18 clear by the recent case of United States v. Pomares in the  
19 Second Circuit, 499 F2d 1220.

20 The defendant was not threatened in this particular  
21 case, nor was he subjected to any physical abuse. Nor, we  
22 would state, your Honor, was he subjected to any protracted  
23 interrogation. Nothing that the agents have been shown to  
24 have done was unfair or constituted overreaching.

25 Your Honor, at this time we would move to have this

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Dowd-direct

2 suppression motion denied.

3 MR. KAPLAN: Your Honor, the defendant here was  
4 presumed upon and his constitutional rights were violated.  
5 There was a deprivation of due process probably as blatant  
6 as any that I've heard.

7 Your Honor, we not only have a Miranda rule to con-  
8 tend with, we have a post-arrest rule, which is more serious.

9 Now, the chronology of events, your Honor, are the  
10 things that of course are of great moment. The agents knew  
11 his work habits, so they know he gets up at five in the  
12 morning and they knew when they arrested him at 3 o'clock or  
13 so in the evening --

14 THE COURT: I think this type of argument is better  
15 made after the agent testifies.

16 MR. KAPLAN: Very well. Then I will hold that.

17 THE COURT: All right.

18 At this point the Court will deny the government's  
19 motion. I would request that you call the witness and then at  
20 the conclusion of the hearing you may renew your motion and  
21 I will hear from you, Mr. Kaplan.

22 J O H N J. D O W D, called as a witness by the  
23 government, being first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. PEDOWITZ:

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2 Q Agent Dowd, by whom are you employed?

3 A The U. S. Department of Justice, Drug Enforcement  
4 Administration.

5 Q And how long have you been employed by the Drug  
6 Enforcement Administration?

7 A Approximately four years.

8 Q And on February 20, 1974, did you participate in the  
9 arrest of the defendant Pedro Luis Ansin?

10 A Yes, I did.

11 Q And where was this?

12 A It was in the Fresh Meadows section of Queens.

13 Q At approximately what time?

14 A About 8:30 at night.

15 Q Were other agents present at that time?

16 A Yes, they were.

17 Q And what, if anything, was said to the defendant  
18 at the time of his arrest?

19 A At the time of his immediate arrest?

20 Q Yes.

21 A Well, we identified ourselves as agents. Hewas  
22 told that he was being placed under arrest for violation of  
23 federal narcotics laws.

24 Q And what, if anything, further was said to the  
25 defendant?

A He was given his rights by Agent Lienick.

THE COURT: I would suggest that you specify what was said to him to the best of your recollection.

THE WITNESS: To the best of my recollection, he was told that he had the right to remain silent, that anything that he said could be used against him in a court of law, that he had a right to an attorney, that if he could not afford an attorney an attorney would be appointed by the Court, that he also had the right to waive any of the rights he had just been given and he could answer questions if he chose to, and that he could stop answering any questions at any time if he chose to do that.

THE COURT: After this was said to him, what, if anything, did he say?

THE WITNESS: I asked him if he understood what his rights were, and he told me that he did.

BY MR. PEDOWITZ:

Q And after Agent Lienick had advised the defendant of his rights and you had questioned him as to whether he understood his rights, what, if anything, was done with the defendant?

A Well, at that time, as I recall, we asked him for the keys to his vehicle, which was parked by the building at the time. I told him that the vehicle was being seized by

1 jgcb 33 Dowd-direct

2 the Government, and he surrendered the keys to the vehicle.  
3 I believe Agent Hoffman seized the vehicle.

4 Q And what, if anything, further was done at that time?

5 A The defendant was transported to the office by myself  
6 and Agent Murphy. I believe Agent Lienick had his own car  
7 there. He took his car to the office.

8 At the office he was processed, printed, photo-  
9 graphed, personal history statement taken, and then he was  
10 transported to West Street, where he was lodged overnight.

11 Q And what, if anything --

12 THE COURT: Up to that time, was he interrogated  
13 relative to matters connected with trafficking in narcotics?

14 THE WITNESS: I did ask him some questions. I think  
15 the first question I asked him was where he was going at the  
16 time that we arrested him.

17 THE COURT: And what was his answer?

18 THE WITNESS: I believe he stated that he was going  
19 to meet a friend, that he had gotten a phone call, that he  
20 was supposed to meet a friend.

21 THE COURT: What else did you ask him on the general  
22 subject of trafficking in narcotics?

23 THE WITNESS: I don't recall everything I asked him.  
24 I did ask him if he knew Tony, or who Tony was.

25 THE COURT: You asked him the names of some people,

if he knew certain people?

THE WITNESS: Agent Murphy might have. What I primarily did was I asked him about Tony.

THE COURT: What did he say in response?

THE WITNESS: At first he didn't say he knew Tony. Then he said he did recall who Tony was. What I was trying to do at the time was disguise the fact that Agent Alleva was actually an agent. For the protection of the informant, I wanted the defendant to think that Tony was a defendant himself and that we were looking for Tony at the time.

BY MR. PEDOWITZ:

Q And what, if anything, was done with the defendant the next day?

A The following day we picked him up at West Street and he was brought to the courthouse, the Southern District.

Q And where was he brought in the courthouse?

A We originally brought him to the third floor, to the narcotics section. From there he was brought to the U. S. Attorney Batchelder's office.

Q And what, if anything, happened in Mr. Batchelder's office?

A Mr. Batchelder again advised the defendant of his rights.

THE COURT: What did he say?

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2 THE WITNESS: Well, he read from a form, your Honor.

3 MR. KAPLAN: Your Honor, this is hearsay, so I object  
4 to it.

5 MR. PEDOWITZ: Your Honor --

6 MR. KAPLAN: This is hearsay, your Honor.

7 MR. PEDOWITZ: This is also a special hearing, your  
8 Honor.

9 THE COURT: I am not taking this for the truth of  
10 the matter asserted, under any circumstances. I want to hear  
11 what, if anything, was said. Whether what was said is true  
12 is another issue, perhaps. But I just want to know if it was  
13 said to him --

14 MR. KAPLAN: Yes.

15 THE COURT: -- in a voice that could be heard.

16 What was said?

17 THE WITNESS: The U. S. Attorney Batchelder read  
18 from a form that he had in front of him. What I would  
19 characterize is that he read the defendant his rights again.  
20 After each specific statement that he made he asked the  
21 defendant if he understood, and the defendant said yes, that  
22 he did.

23 MR. PEDOWITZ: Your Honor, I would ask at this  
24 point that this document be marked as Government Exhibit 1 for  
25 purposes of the suppression hearing.

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Dowd-direct

2 THE COURT: All right. We'll call these, so they  
3 are easier, Court exhibits. This will be Court Exhibit 1 for  
4 identification.

5 (Court Exhibit 1 marked for identification.)

6 BY MR. PEDOWITZ:

7 Q Do you recognize this form, Mr. Dowd (handing)?

8 A Yes, I do.

9 Q And how do you recognize it?

10 A I signed the form on the last page.

11 Q And what is it?

12 A This is a form that the U. S. Attorney read to the  
13 defendant and also the form that he filled out while inter-  
14 viewing the defendant.

15 Q And did the defendant make certain statements at  
16 the time he was interviewed by Mr. Batchelder?

17 A Yes, he did.

18 MR. PEDOWITZ: Your Honor, I have no further  
19 questions of this witness.

20 THE COURT: Mr. Kaplan?

21 MR. PEDOWITZ: Your Honor, may I offer this form into  
22 evidence?

23 THE COURT: You haven't laid the full foundation.

24 MR. KAPLAN: I object to it.

25 THE COURT: And I'll sustain the objection.

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Dowd-cross

2 MR. PEDOWITZ: Fine, your Honor.

3 CROSS-EXAMINATION

4 BY MR. KAPLAN:

5 Q Mr. Dowd, did you know where Mr. Ansin worked?

6 A Where he worked?

7 Q Yes.

8 A Yes, I did.

9 Q Where was that?

10 A It was in the Bronx. I don't know the exact loca-  
11 tion.

12 MR. PEDOWITZ: Objection, your Honor.

13 THE COURT: Sustained. Let's get to the issue.

14 MR. KAPLAN: The issue was, your Honor, as to the  
15 time he went to work and the length of time --

16 THE COURT: I have that. I have accepted that por-  
17 tion of the testimony given by your client. Let's move on  
18 from that.

19 Q Now, Mr. Dowd, do you distinctly remember Mr.  
20 Lienick giving the defendant his rights in the park?

21 A Yes, I do.

22 Q And how many people were involved in that arrest?

23 MR. PEDOWITZ: Objection, your Honor, as irrelevant.

24 THE COURT: I'll allow it.

25 IF you know.

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Dowd-cross

A There was Agent Lienick, Agent Hoffman, Agent  
Murphy, and myself.

Q Four.

A As I recall.

Q Anybody else?

A If there was, I don't recall.

Q How about Torre?

A No. He wasn't there.

Q Did you have your guns out?

A No, I did not.

Q Did anybody have a gun out?

A I was closest to the defendant. I had my hand on  
my gun at the time.

Q How about the others? Did anybody have a revolver  
exposed?

A As I say, I was closest to the defendant. I was  
watching his hands at the time.

Q So you didn't see the others.

A No.

Q But everybody was in the immediate vicinity of Mr.  
Ansin.

A Yes.

Q And this was in the park.

A Yes.

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Dowd-cross

2 Q At night?

3 A Yes.

4 Q Any other people around?

5 A At that time, no.

6 Q And it was at that time that Mr. Lienick -- that you  
7 advised him it was an arrest pursuant to a violation of  
8 narcotics laws, and right after that Mr. Lienick gave him his  
9 rights, is that your testimony?

10 A Yes.

11 Q Standing in the dark in the park?

12 A I don't remember specifically.

13 Q And there came a time when Lienick gave him his  
14 rights?

15 A Yes.

16 Q In the park, though, in that area we are speaking  
17 about.

18 A In the area, yes.

19 Q And were there other people talking at the time  
20 Lienick allegedly told him his rights?

21 A I don't believe so.

22 Q You had three others around. What were they doing?

23 A I don't recall.

24 Q And then you asked him, "Mr. Ansin, do you understand  
25 what Mr. Lienick said." Is that your testimony?

1 jgcq 40

Dowd-cross

2 A Yes, I did.

3 Q And he said, "Yes, I did understand."?

4 A Yes, he did.

5 Q Did you take a note of this?

6 A No. I do recall it, though.

7 Q You took no notes concerning this arrest, though.

8 MR. PEDOWITZ: Objection, your Honor.

9 THE COURT: Sustained.

10 Q This was what time, now?

11 A Approximately 3:30 at night.

12 Q Okay. And how long did you stay in the park with  
13 him?

14 A Just long enough to get the keys to his vehicle.

15 Q How long in time? A half hour? Fifteen minutes?

16 A Ten minutes, 15 minutes.

17 Q Now we are at a quarter to nine. Then you took him  
18 to a car, is that right?

19 A Yes.

20 Q And you sat in the rear seat; in the rear with him.

21 A Yes.

22 Q And two other men in the front?

23 A No, just the driver.

24 Q And who was the driver?

25 A I believe it was Agent Murphy.

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Q How, had he surrendered the keys to the car?

A Yes, he did.

Q Did you talk to him about the car would be confiscated, or seized?

A Yes, I did.

Q That was at the time of your arrest, you told him that?

A Yes, I did.

Q Did you search him?

A Yes.

Q In the park?

A Yes. I performed --

MR. PEDOWITZ: Objection, your Honor.

THE COURT: Did anybody hit him?

THE WITNESS: No, sir.

THE COURT: At any time?

THE WITNESS: No, sir.

THE COURT: Punch him?

THE WITNESS: No, sir.

THE COURT: Kick him?

THE WITNESS: No, sir.

THE COURT: Knock him down?

THE WITNESS: No, sir.

THE COURT: Push him around in any way, shape or

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Dowd-cross

2 form?

3 THE WITNESS: No, sir, your Honor.

4 BY MR. KAPLAN:

5 Q What would you say his state of mind was, now?  
6 Would you just describe it.

7 MR. PEDOWITZ: Objection, your Honor.

8 MR. KAPLAN: It is not opinion, your Honor. I am  
9 asking for a fact.

10 THE COURT: Well, did he appear to you to be con-  
11 fused?

12 THE WITNESS: Prior to the arrest, he did. He was  
13 crossing the park. I was trying to get close to him. There  
14 is always the possibility that someone is going to run. So I  
15 called him by his first name. He stopped and looked around.  
16 He did appear confused at that time.

17 At the time I got close enough to take him into  
18 custody, I told him who we were and that he was under arrest.

19 BY THE COURT:

20 Q And how did he react at that time? Did he cry?

21 A I do recall him crying in the U. S. Attorney's  
22 office, but not prior to that.

23 Q He didn't become hysterical?

24 A No, I wouldn't characterize him as hysterical.

25 Q Did he appear to be calm?

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Dowl-cross

2 A No, not calm.

3 Q Agitated but not hysterical?

4 A Not hysterical, no.

5 BY MR. KAPLAN:

6 Q And you got in the car about a quarter to nine?

7 A Approximately.

8 Q How long is the trip to 57th Street?

9 A I don't recall exactly how long.

10 Q Approximately. An hour?

11 A Approximately, yes.

12 Q All right. So you got there approximately 10  
13 o'clock, a quarter to ten, would that be a fair statement?

14 MR. PEDOWITZ: At this time the government is  
15 willing to concede that the statements which the government  
16 wishes to put into evidence were not made until one o'clock  
17 the next day, in Mr. Bachelder's office.

18 Any questioning as to time would seem to me to be  
19 highly irrelevant in view of that concession.

20 THE COURT: And you don't expect to introduce any  
21 statements made between the time he was arrested in the  
22 park, which was, as I recall it, about 3:30 p. m., was it --

23 MR. KAPLAN: Yes, your Honor, about 3:30.

24 THE COURT: -- and the following day about 1p. m.  
25 when he was in the United States Courthouse in the office of

1 jgcq 14

Dowl-cross

2 Mr. Batchelder, is that correct?

3 MR. PEDOWITZ: Absolutely correct, your Honor,  
4 unless they are elicited on cross-examination.

5 THE COURT: All right.

6 MR. KAPLAN: Your Honor, the importance of the  
7 questions are, I believe, obvious. They show the precise  
8 state of mind without sleep, without eating, and what  
9 transpired up until one in the afternoon.

10 THE COURT: I have no information that he went  
11 without sleep. I know that he was taken to West Street and  
12 put in a cell and then in the morning was taken to the court-  
13 house. There is really no indication that he was without  
14 sleep.

15 BY THE COURT:

16 Q Did he ever complain to you that he didn't sleep on  
17 the night following his arrest?

18 A Not that I recall, your Honor. I did ask him if he  
19 had gotten anything to eat. He said no. I asked him if he  
20 wanted something. He said no.

21 BY MR. KAPLAN:

22 Q All right. When you got to 57th Street, you processed  
23 him. Did you talk to him about his immigration status?

24 A I asked him that in the vehicle, on the way to the  
25 office.

Q Did you tell him that he is going to be kicked out of the country, or words to that effect?

A Not words to that effect. I asked him if he was a citizen. He said no. He said he was an alien. I asked him about his alien status and I asked him questions about who he was living with, and so on.

Basically the questions I asked him were to elicit information that might be valuable if he had become a fugitive later on.

Q At no time did you threaten him that he would be expelled from the country based on his status?

A I wasn't in a position to threaten him.

MR. KAPLAN: That is not responsive. I move to strike it.

THE COURT: Strike it.

Q Did there come a time during that ride that you threatened him with that he would be in jail?

A I never threaten a prisoner at all.

Q Withdraw the word "threat." Did you have a conversation concerning jail, on the way to 57th Street?

A I don't recall.

Q Did you have a conversation concerning his girl friend and anything that may occur to her? Did you bring that up to him on the trip from the park to West Street?

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A No. I did ask him where he lived.

Q Other than that.

A Not that I recall, no.

Q Did you indicate that if he in turn was able to work for you in an undercover status that it would benefit him, he would be benefited by that? Did you suggest that on the trip?

A I might have. I don't recall specifically whether I asked him that in the car or at the office or when.

Q Did there come a time that you told him that people received forty years for violating the law in the manner in which he allegedly did? Did you mention forty years to him?

A I did not, no.

Q Did anybody in your presence?

A Not that I recall. I believe the U. S. Attorney told him what the violation was and what the penalty might be.

Q Aside from that, you never said that?

A Not that I recall.

Q On 57th Street, someone took his pants away, is that right? They took his pants off?

A Well, he was searched. They call it a strip search. It is routine.

Q How long was he without his pants?

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2 A I would say no more than five minutes, ten minutes.

3 THE COURT: Was he questioned while he was without  
4 his pants?

5 THE WITNESS: I don't believe so.

6 THE COURT: You don't know that he was?

7 THE WITNESS: No, I don't.

8 THE COURT: All right. Did there come a time when  
9 he got his pants back?

10 THE WITNESS: Yes, right after the search.

11 THE COURT: And was he then taken from 57th Street  
12 to West Street?

13 THE WITNESS: Yes, he was.

14 THE COURT: Was he questioned from the time he  
15 received his pants back to when he was lodged at West Street,  
16 as far as you know, about trafficking in narcotics?

17 THE WITNESS: Yes, I believe there was questioning  
18 as far as his cooperation, as far as cocaine traffic, and so  
19 on.

20 THE COURT: In other words, it was indicated to him  
21 that his cooperation could be helpful to him?

22 THE WITNESS: Yes, yes.

23 THE COURT: What did he say.

24 THE WITNESS: He didn't make any statement at that  
25 time.

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Dowd-cross

2 THE COURT: Were you present with him in West Street  
3 and did you question him then?

4 THE WITNESS: No, I did not.

5 THE COURT: Were you present the following morning  
6 when he was taken from West Street to the United States Court-  
7 house?

8 THE WITNESS: Yes, I was.

9 THE COURT: And during the time beginning when you  
10 picked him up, or agents picked him up at West Street, you  
11 being one of them, to the time he was brought to Mr.  
12 Batchelder's office, was any questioning conducted?

13 THE WITNESS: Not that I recall, your Honor.

14 BY THE COURT:

15 Q During that morning did there come a time when he  
16 was advised of his Constitutional Rights? And if so, when  
17 was the first time.

18 A He was advised by the U. S. Attorney from the form  
19 that I spoke of before.

20 Q That was the first time that morning?

21 A Yes.

22 Q That was at what time, approximately?

23 A As I recall, there was a delay. I believe it was  
24 the same day. We had made about 14 or 15 arrests in the  
25 Tramunti case, so we were sitting in the office for some time,

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2 waiting. I believe it was early afternoon.

3 Q Would you tell us specifically who was present and  
4 what was said?

5 A An agent from the Immigration Service showed up,  
6 came down to the office. He spoke to the defendant. Agent  
7 Murphy, myself, and the U. S. Attorney were present during  
8 the questioning by the U. S. Attorney.

9 Q What was said by the U. S. Attorney to the defendant,  
10 starting right at the beginning?

11 A At the beginning he took out the form and --

12 Q Indicating Court Exhibit 1 for identification  
13 (handing).

14 A Yes, this form.

15 Q And what did he do?

16 A Well, he asked the defendant what his name was. I  
17 can't remember the specific order of the questions.

18 MR. KAPLAN: Your Honor, this is hearsay, of course.

19 THE COURT: It is not being offered for the truth  
20 of the matter asserted, and I want that to be clear in the  
21 record. . But I do want to get the state of mind and the  
22 sequence of what happened here.

23 Q As these questions were asked, was there any sound  
24 from the defendant?

25 A He was crying at one point.

Q Did he appear to you to be hysterical?

A No.

Q Did he appear to you to be in an agitated state?

A He was agitated. He appeared angry at one point. He was crying at another point.

Q As these different statements were made by Mr. Batchelder, which you characterize as warnings, what in fact did the defendant say, if anything, as each statement was made?

A Well, he asked him one question at a time. He told him that he had the right to remain silent.

Q Then what happened?

A Well, after each right he asked him, "Do you understand?" As the defendant answered yes, he wrote on the form, "yes."

Q Did the defendant answer yes in English?

A Yes, he did.

Q Was there any point when the question was asked where the defendant said "I don't understand" or he didn't comprehend, or any Spanish statement which might be taken for "I don't understand what you are saying"?

A Not that I recall. I do believe he had to ask some of the questions more than once, because he did say he didn't understand. So he asked him again. I do believe he requested

him to speak a little slower.

Q And after the question was repeated, did the defendant respond?

A Yes, he did.

Q And what did he say, if you recall?

A You mean specifically to each question?

Q Did he say "I understand, yes," or "Stop asking questions," or anything else?

A I don't recall him at any time saying "Stop asking me questions."

Q What did he say?

A Well, the first question was, when he gave him his rights, he said, "Do you understand?" And he said yes. He explained to him what he had been arrested for. He said he understood that.

He stated that he didn't sell any cocaine. And at that point the U. S. Attorney asked him specifically about certain incidents, at which point he did make a statement about, well, specific incidents he was asked about, like he knew Charlie.

He stated that his girl friend was a dancer and that he met people, he met many people, that used cocaine, and that at one point he was given a sample in a tin foil package --

MR. KAPLAN: I object, your Honor.

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2 THE COURT: I'm not taking it for the truth of the  
3 matter asserted. It is not going to be utilized as an ad-  
4 mission, at this hearing anyway.

5 MR. KAPLAN: Yes, your Honor. I understand.

6 A (Continuing) And that Charlie had introduced him  
7 to some Americans.

8 Q Did he make any of these statements before Mr.  
9 Batchelder read from the paper?

10 A No, he did not.

11 Q In other words, it your testimony that Mr. Batchelder  
12 read each of the questions which are contained on that piece  
13 of paper and either, having asked him once or twice or three  
14 times, received a yes or an affirmative answer to each of them  
15 before he was questioned on the merits?

16 A That is correct.

17 BY MR. KAPLAN:

18 Q Was it ever suggested that Mr. Ansin be arraigned  
19 before he went to the U. S. Attorney's office?

20 MR. PEDOWITZ: Your Honor, objection.

21 THE COURT: I'll overrule that. Let's see if it  
22 happened.

23 A Would you repeat the question?

24 THE COURT: Mr. Reporter.

25 (Question read.)

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2 A Not that I recall, no.

3 Q Did anyone discuss with you or in your presence  
4 that Mr. Ansin at this point was both arrested and indicted  
5 and that he should be arraigned?

6 MR. PEDOWITZ: Objection, your Honor. Indicted.

7 THE COURT: Yes.

8 MR. KAPLAN: Was he indicted by this time, your  
9 Honor?

10 THE COURT: The record that I have --

11 MR. KAPLAN: I'm not sure.

12 THE COURT: -- indicated that the indictment which  
13 we are trying, which is the first one I know of involving Mr.  
14 Ansin, was filed on March 4, 1974, which is several days  
15 after.

16 MR. KAPLAN: It was post-arrest, though.

17 THE COURT: It is post-arrest. I would suggest it  
18 is post-arrest, pre-arraignment before the Magistrate, pre-  
19 indictment.

20 MR. KAPLAN: He wasn't named, your Honor, in any of  
21 the prior indictments that Fernandez was involved in. He  
22 was never named in any of those. I think they were constantly  
23 being coupled together at later dates. I think 162 --

24 THE COURT: There are several indictments, but I  
25 don't recall that, frankly. But I know he was not named as a

defendant.

MR. KAPLAN: In none of those prior --

THE COURT: No. He may have been named a co-conspirator in some one or another, but I don't know that. I just mention there are indictments, at least a couple, which precede 74 Crim. 224.

MR. KAPLAN: I think I have them.

THE COURT: Well, I think you can go on.

MR. KAPLAN: I have no further questions, your Honor.

MR. PEDOWITZ: Your Honor, at this time I would make a motion.

THE COURT: Do you have any questions?

MR. PEDOWITZ: I have no further questions.

THE COURT: You may step down.

(Witness excused.)

MR. PEDOWITZ: Your Honor, at this time I would make a motion to deny the defendant's motion for suppression.

MR. KAPLAN: Your Honor, the defendant respectfully moves the Court to suppress the statement, the subject matter of which we just had a hearing on.

Your Honor, involuntary confessions are inadmissible. Involuntary confessions are those that come under the heading of Miranda violations, and that is improper procedures pursuant

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2 to the Miranda Rule, Miranda v. Arizona, post-arrest state-  
3 ments as well as post-indictment statements if the defendant  
4 was named as a conspirator, although not a defendant.

11 5 Now, as to the Miranda rule, your Honor, I think  
6 the law is legion that the Miranda rule is not an objective  
7 view, it is a subjective view. It is uttering or muttering  
8 five precautions to a man who your Honor could see and hear  
9 on the stand, whose mother tongue is Spanish, although he does  
10 understand English to a large extent, and who is scared and  
11 frightened up here, as your Honor witnessed.

12 You can imagine what his state of mind was in the  
13 park, in the dark, with four young men, with at least someone  
14 reaching with his hand on a gun.

15 At that point, according to the testimony of Mr.  
16 Dowd, Mr. Lienick, or shortly thereafter, gave the precautions.  
17 I think they were just a waste of breath. I don't think they  
18 fell on ears that heard that at all.

19 The next time they were given was in Mr. Batchelder's  
20 office, the United States Attorney, and if they were given  
21 with greater clarity, they were given still, your Honor,  
22 while the defendant was probably in a more horrendous state of  
23 mind.

24 Your Honor, due process here would have called for  
25 some minimum safeguards. I think that the statements taken

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2 after an arrest of an immigrant who is vulnerable to all  
3 sorts of threats, like deportation and forty years in jail,  
4 as he indicated, or jail time, as even Mr. Dowd indicated,  
5 although not forty years, having gone through an unfamiliar,  
6 humiliating pre-statement set of police procedures, espec-  
7 ially in this case when he was never arrested before, I think  
8 due process would have called for the United States Attorney,  
9 being a representative of the people as well as a prosecutor,  
10 to have handled this just a little differently, Judge.

11 I think that at least minimum due process safeguards  
12 would have called for someone in Legal Aid, or someone, to  
13 have been present, not to have him with two agents, both of  
14 which had already scared the daylights out of him by arrest-  
15 ing him, and an Immigration man who he surely thought was  
16 probably going to evict him right then and there, throw him  
17 out of the country right after a prison term, together with  
18 what preceded him.

19 Further, your Honor, this was done in a premeditated  
20 sort of a way. Well, it didn't behoove the government, this  
21 entire business, but especially this business with the arraign-  
22 ment, your Honor. He was arrested at 8:30. He was arrested,  
23 of course, going to the park to meet Tony, as indicated by  
24 Mr. Dowd. Tony knew where he worked, so he knew that he got  
25 up at 5 in the morning. They arrest him at 8.15, your Honor.

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2 A Magistrate could have been reached even in the evening,  
3 we know surely in the state courts, and you can reach them  
4 until 12 o'clock in the Night Court.

5 If he couldn't have been reached, your Honor, assum-  
6 ing that to be the fact, then surely he could have been reached  
7 at 9 o'clock the next business day. But they didn't do that.  
8 What they do is secrete him. That's really what they did.  
9 It is the Westchester County Police case all over again, when  
10 they ran him from one place to another.

11 They absolutely secrete him. They don't get him  
12 before a judge so he has at least minimum safeguards there,  
13 but they take him to the office of the prosecutor, who  
14 obviously is totally dis-interested in his due process rights,  
15 by the actions that followed.

16 THE COURT: Thank you.

17 MR. PEDOWITZ: Your Honor, it is for me somewhat of  
18 a novel concept that Miranda warnings require a subjective  
19 view. The purpose of Miranda, as described by the United  
20 States Supreme Court in the case of Michigan v. Tucker last  
21 term, indicates that the purpose of the Miranda warnings are  
22 to provide the defendant with some information about his  
23 Constitutional Rights, that he is to be informed of what his  
24 Constitutional Rights are.

25 Your Honor, in this particular case the defendant

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2 was twice advised of his Constitutional Rights. He told Mr.  
3 Batchelder that he understood his Constitutional Rights.  
4 In addition, normal police procedures, DEA procedures, was  
5 followed in this particular case. The defendant was advised  
6 of his possible jail time. There is nothing impermissible  
7 about that, your Honor.

8 Moreover, if the defendant is advised that it would  
9 behoove him to cooperate with the government and make a clean  
10 breast of what he has done, there is nothing wrong with that,  
11 your Honor.

12 In addition, the defendant in this particular case  
13 told us that he gave a truthful statement to Mr. Batchelder,  
14 that he thought he was indicating to Mr. Batchelder that he  
15 had not in fact sold cocaine, that he had not violated the  
16 law, in his view. Your Honor, there is no indication whatso-  
17 ever in this particular case that the statement is an in-  
18 voluntary one or that it is an incorrect one.

19 Moreover, your Honor, in the case of United States  
20 v. Marrero, the Second Circuit has said that delay in arraign-  
21 ment is not determinative. The Court said there, and I  
22 quote:

23 "It is not the lapse of time but the use of time  
24 when the Magistrate is unavailable to employ the condemned  
25 psychologically coercive or third degree practices which is

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2 proscribed by our cases."

12

3 Your Honor, the Second Circuit is indicating that  
4 delay is not determinative, indeed that in Marrero they dis-  
5 cuss Section 3501 quite extensively, indicating that delay  
6 is not in and of itself a determinative factor.

7 MR. KAPLAN: Your Honor, may I just add this? In  
8 U. S. v. Harris, 401 U.S.222, I am reading what appears to  
9 be a quote from Richardson on Evidence, 10th Edition. I  
10 believe this to be a quote:

11 "It is plain that unless the prosecution demonstrates  
12 that the required warnings were first given and that there-  
13 after the defendant validly waived his rights, no statement  
14 exculpatory or inculpatory obtained from the defendant during  
15 custodial interrogation can be admitted as affirmative evidence  
16 against him."

17 THE COURT: Thank you, gentlemen.

18 The defendant has moved to suppress his post-  
19 arrest statements. Following a hearing, I make the following  
20 findings:

21 I find that the defendant was duly advised of his  
22 Constitutional Rights after his arrest and prior to being ques-  
23 tioned by any agent of the government.

24 I find that there was no physical or mental  
25 coercion at the time the defendant was questioned by Assistant

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United States Attorney Batchelder at the United States Court-  
house, nor was there any protracted interrogation, the in-  
terrogation apparently having lasted something less than an  
hour and a half.

I find that no direct governmental promise of  
immunity was given to obtain any statement from the defendant.

Considering the age, the mental and language ability  
of the defendant and his state of mind following his arrest,  
and continuing through his interrogation, I conclude that the  
defendant's will was not overborne at the time he made the  
statement which the government seeks to introduce and that  
the statements were voluntary.

Accordingly the defendant's motion to suppress is  
denied.

MR. KAPLAN: I respectfully except, your Honor.

THE COURT: We will take a five minute recess.

(Recess.)

THE COURT: Miss Kruger, bring in the jury.

MR. KAPLAN: Your Honor, is Mr. Dowd going to take  
the stand?

THE COURT: Yes.

(Jury present.)

THE COURT: Good morning, ladies and gentlemen.  
I want to apologize to you on behalf of the Court and counsel.

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2 It is now a quarter of 11. I know, pursuant to your instruc-  
3 tions, you were here promptly at 9:30.

4 I can only tell you that we took up a matter yester-  
5 day afternoon after you left and it continued today, and it  
6 was a matter which of necessity had to be conducted outside  
7 of the presence of the jury.

8 Therefore, as we didn't know we would be starting  
9 late with you, we had told you already to be here at 9:30.  
10 And I appreciate the cooperation I've had from counsel, who  
11 arrived for this morning's activities very promptly at 9  
12 o'clock. So we have been working since 9 this morning.

13 And, as I say, I apologize on behalf of all of us  
14 for any delay that has been caused to the jury.

15 Mr. Pedowitz, you may proceed.

16 MR. PEDOWITZ: Thank you very much, your Honor.

17 At this time we call John Dowd, your Honor.

18 J O H N D O W D, called as a witness by the Government,  
19 being first duly sworn, testified as follows:

20 MR. PEDOWITZ: May I proceed, your Honor?

21 THE COURT: You may.

22 DIRECT EXAMINATION

23 BY MR. PEDOWITZ:

24 Q Agent Dowd, by whom are you employed?

25 A By the U. S. Department of Justice, Drug Enforcement

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2 Administration.

3 Q And how long have you been employed by the Drug  
4 Enforcement Administration?

5 A Approximately for four years.

6 Q On February 20, 1974, did you participate in the  
7 arrest of the defendant Pedro Luis Ansin?

8 A Yes, I did.

9 Q And where was this?

10 A It was in the Fresh Meadows Section of Queens. I  
11 believe it was 64th Circle.

12 Q And at what time was this?

13 A Approximately 8:30 at night.

14 Q Were other agents present at the time the defendant  
15 was arrested?

16 A Yes, they were.

17 Q Who were they?

18 A Agent Lienick, Agent Murphy and Agent Hoffman.

19 Q What, if anything, was said to the defendant at the  
20 time of his arrest?

21 A He was told he was being placed under arrest for  
22 violation of the federal narcotics laws and he was advised  
23 of his rights pursuant to the Miranda decision --

24 MR. KAPLAN: I object.

25 THE COURT: Yes, that is conclusory.

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2 Let's have what he was told and who told it to him.

3 THE WITNESS: Specifically Agent Lienick told the  
4 defendant --

5 MR. KAPLAN: I object, your Honor, as hearsay.

6 THE COURT: Well, if the agent told him certain  
7 things, you were present when those things were told to him?

8 THE WITNESS: I was.

9 THE COURT: All right.

10 You object to the witness recounting what was said  
11 to the defendant?

12 MR. KAPLAN: Unless a more proper foundation is  
13 laid, I object, your Honor.

14 MR. PEDOWITZ: All this goes to the state of mind  
15 of the defendant, your Honor. It is an exception to the  
16 hearsay rule.

17 MR. KAPLAN: That is not the basis of the objection,  
18 your Honor.

19 THE COURT: No. You might go back just one or two  
20 steps foundationwise.

21 MR. PEDOWITZ: Certainly, your Honor.

22 Q Who was present at the time the defendant was  
23 arrested?

24 MR. KAPLAN: I object, your Honor. That was asked.

25 THE COURT: Yes, that was covered. We had several

agents, including the witness and the defendant.

Q What, if anything, was said to the defendant at the time of his arrest?

A The --

MR. KAPLAN: I object unless he specifies who, your Honor.

THE COURT: Yes.

Did someone have a conversation with the defendant?

THE WITNESS: Yes, they did, your Honor. Agent Lienick.

THE COURT: And could you tell us what Agent Lienick said to the defendant and what, if anything, the defendant said to Agent Lienick? Was this after the defendant had been advised that he was placed under arrest?

THE WITNESS: Yes, your Honor. I advised the defendant that he was being placed under arrest.

THE COURT: And how long after that did Agent Lienick have this conversation with him?

THE WITNESS: Approximately two minutes, the best I recall.

Q Now tell us what, if anything, was said by Agent Lienick and what, if anything, was said by the defendant.

A To the best of my recollection, Agent Lienick stated to the defendant that he had the right to remain silent, that

1 he had the right -- if he did make a statement that it could  
2 be used against him in court, that he had the right to an  
3 attorney, that if he could not afford an attorney an attorney  
4 would be appointed by the Court, that he also had the right  
5 to waive any of the rights that had just been explained to  
6 him, and that if he was answering questions he could stop  
7 answering questions at any time he chose.

8  
9 MR. KAPLAN: Your Honor, I object and move to strike  
10 it.

11 THE COURT: Is that what he said to him?

12 THE WITNESS: As best I recall, your Honor.

13 THE COURT: Denied.

14 MR. KAPLAN: Exception.

15 BY MR. PEDOWITZ:

16 Q What, if anything, further was said to the defen-  
17 dant at that time?

18 A At that time I asked the defendant if he had under-  
19 stood what Agent Lienick had told him. He said he did.

20 Q After Agent Lienick had advised the defendant of  
21 his rights --

22 MR. KAPLAN: Objection.

23 THE COURT: After the conversation which you've  
24 just testified to.

25 Q (Continuing) -- what, if anything, was done with

1 the defendant?

2 A Well, we asked him for the keys to the vehicle that  
3 was parked by the building, and he was advised that his  
4 vehicle was being seized by the United States Government.  
5

6 MR. KAPLAN: I would ask that the testimony be more  
7 explicit, rather than the pronoun "we," who asked.

8 THE COURT: Yes, if you recall. If you don't, you  
9 can say either, "Agent Lienick or me," if something was in  
10 that context. Then it can be inquired into further. But  
11 don't just use the blind "we."

12 A (Continuing) I don't recall who asked him for the  
13 keys to the vehicle.

14 Q And what, if anything, was done with the defendant  
15 at that time?

16 A At that time he was transported to our office on  
17 57th Street, where he was fingerprinted, photographed and a  
18 personal history was taken.

19 After that he was taken to West Street, the Federal  
20 House of Detention, where he was lodged overnight.

21 Q And what, if anything, was done with the defendant  
22 the next day?

23 A The following day he was picked up at West Street  
24 and was transported here to the courthouse, the Southern  
25 District of New York, and he was brought to the office of

Assistant U. S. Attorney Batchelder.

Q Did there come a time when Assistant United States Attorney Batchelder read from a form to the defendant?

A Yes, there did.

Q I now show you what has previously been marked as Court Exhibit 1 for identification. Do you recognize this?

A Yes, I do.

Q Would you tell the jury what that is?

A This is a form that Assistant U.S. Attorney Batchelder used. He had it in front of him and he read from it as he asked the defendant specific questions.

Q And how can you identify it?

A On the last page I signed my name as a witness.

MR. PEDOWITZ: At this time, your Honor, we would offer Court Exhibit 1 for identification. However, we would redact it, your Honor, only to the first page.

MR. KAPLAN: Redact the first page, your Honor?

THE COURT: No. Redact it so that only the first page would remain. Do you want to look at it?

MR. KAPLAN: Yes.

(Pause.)

MR. KAPLAN: I object, your Honor.

THE COURT: On what ground.

MR. KAPLAN: May we come to the side bar?

1 THE COURT: Yes, indeed you may.

2 (At the side bar.)

3 MR. KAPLAN: Your Honor, I object for a twofold  
4 reason. The first, your Honor, is that the best testimony  
5 would have been Mr. Batchelder, who was available to testify  
6 as to whether or not he asked those questions and whether or  
7 not in fact that page one is in fact page one, because I  
8 understand Mr. Dowd said it appears on page 3. The record,  
9 with your Honor's permission, will indicate that it is a  
10 series of three pieces of paper stapled together.

11 THE COURT: Apparently at the top, listed as Form  
12 Number USA 33S-306, the first page is demoninated P1, the  
13 second page the same form number appears, P2, the third page  
14 the same form number appears P3.

15 The only item that is being presented to the jury  
16 at this point, or proffered, is page 1. Page 1 appears to be  
17 made up by Mr. Batchelder.

18 You say that of course Mr. Batchelder should be  
19 here. I don't think the government has yet laid the founda-  
20 tion. This is a record made and kept in the regular course  
21 of business. The regular course of business would be for the  
22 United States Attorneys to keep such a record. If they lay  
23 that foundation, it would seem to me it would not be necessary,  
24 under the Business Records Rule, for the person making the  
25

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2 entries to actually be present.

3 MR. KAPLAN: I agree with that. If this witness  
4 can testify that it is the business of the government to  
5 conduct questions and answers similar to page 1 of Court  
6 Exhibit 1, and if he can answer the other questions that lead  
7 to the foundation for the introduction of business records,  
8 then I will remove the objection, subject however to the  
9 overall objection, your Honor, as indicated in the hearing.

14 10 THE COURT: Yes. Of course, you always have that.

11 MR. PEDOWITZ: May I be heard very briefly?

12 THE COURT: Of course you may.

13 MR. PEDOWITZ: It seems to me, your Honor, that  
14 the business record exception is an exception to the hearsay  
15 rule. We are not offering page 1 for its hearsay purpose.  
16 We are not offering to prove the truth of the matter asserted.  
17 Rather we are offering it to demonstrate, first of all, that  
18 the rights of the defendant were given to him and that he  
19 understood those rights, that he said he understood those  
20 rights, your Honor. And therefore we are offering them to  
21 prove the state of mind of the defendant, your Honor.

22 MR. KAPLAN: I don't quite follow that theory.

23 THE COURT: Let's put this aside for a moment.  
24 Let me ask you this: In view of the statement that you've  
25 just made, since the witness was present at the time and

place this occurred, why could he not be asked what did Mr. Batchelder say to the defendant and what did the defendant say to Mr. Batchelder? And if he could not recall, I assure you this could be used to refresh his recollection. Why do you need to put in the document itself, since you have an eyewitness who was there?

I would be willing, I would suggest, to permit you to ask this witness what Mr. Batchelder said to the defendant and what the defendant said to him.

MR. PEDOWITZ: Of course, your Honor.

THE COURT: If you feel that limiting instructions are necessary in the context of this case, that this is not being offered for the truth of the matter asserted but merely to establish the state of mind of the defendant, I would give those instructions, but I would suggest your offering this --

MR. PEDOWITZ: That is the only reason we could possibly be offering it.

THE COURT: For the truth of the matter, so that these things were said, that he in fact said these things to him.

Are you telling me that you are not offering it for the truth of the matter asserted?

MR. PEDOWITZ: That is correct, your Honor. We are

2 not offering it for the truth of the matter asserted. For  
3 example, we are not offering it to prove that you have a  
4 constitutional right --

5 THE COURT: Merely that these questions were asked  
6 and these answers were given.

7 MR. PEDOWITZ: Precisely, your Honor.

8 MR. KAPLAN: I have a further objection, then.  
9 The further objection is the best evidence rule requires the  
10 original writing and a proper foundation for the original  
11 writing.

12 THE COURT: But the original thing that happened  
13 was an oral discussion. The writing, in my judgment, is  
14 secondary to the discussion. I think this witness can  
15 properly testify to the oral discussion.

16 If you object to the oral discussion and say this  
17 record is the best evidence, I will permit them to introduce  
18 it.

19 MR. KAPLAN: Your Honor, I agree, it is a circuitous  
20 argument. But, very succinctly, once again may I say that  
21 I believe that under the rules of evidence, the best evidence  
22 rule requires the writing. The writing, on the other hand,  
23 requires a proper foundation that is not laid by Mr. Dowd.

24 So what I have, your Honor, is that if page 1 is  
25 to be introduced, it is to be introduced by Mr. Batchelder

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2 on one of two bases: either business rule or question and  
3 answer, that he physically asked these questions and he was  
4 given these answers.

5 THE COURT: You don't need Mr. Batchelder for either  
6 of those purposes.

7 MR. PEDOWITZ: And I think that it would be re-  
8 versible error to call Mr. Batchelder.

9 THE COURT: I don't think it would. He is not  
10 trying this case. But let me leave you gentlemen with this.

11 I suggest there are two alternatives. Number one,  
12 I believe it a perfectly proper alternative to ask the witness  
13 what did Mr. Batchelder say to the defendant, what did the  
14 defendant say to Mr. Batchelder. And if you want limiting  
15 instructions, that it is offered merely to establish the  
16 defendant's state of mind -- is that what you want?

17 MR. PEDOWITZ: No, I don't want that statement,  
18 your Honor. It seems to me that there can only be one purpose  
19 for the offer of that evidence. The jury is not interested,  
20 it would seem to me, in knowing whether the defendant does have  
21 a constitutional right to remain silent.

22 THE COURT: What instruction do you request?

23 MR. PEDOWITZ: I request no limiting instruction,  
24 your Honor.

25 THE COURT: All right. What instruction do you

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2 request?

3 MR. KAPLAN: I object to its admission.

4 THE COURT: You object to its admission.

5 MR. KAPLAN: I can't see how limiting instructions  
6 can soften or do away with the damage.

7 THE COURT: The objection is overruled.

8 MR. PEDOWITZ: May I now offer this piece of paper?

9 THE COURT: No. I am going to permit you to ask  
10 the questions. If as an alternative to your asking the ques-  
11 tion counsel would prefer you to lay the business records  
12 foundation in the record, to wit that this is or record made  
13 in the regular course of business by the government and it is  
14 the regular course of business to make and keep such a record,  
15 and this witness answers yes, then it will go in and I  
16 wouldn't permit the questioning. You have an option.

17 MR. KAPLAN: I know, of course, what I am going to  
18 request. But, Judge --

19 THE COURT: You are not waiving any objection by  
20 doing this. I want that understood.

21 MR. KAPLAN: Thank you, your Honor. But this  
22 witness couldn't testify as to the regular course of business  
23 in relation to page one of the three page document.

24 MR. PEDOWITZ: He certainly could, your Honor.

25 THE COURT: Let me suggest, if he has been an agent

1 for four years, he will testify to that. I suggest, the  
2 proper procedure here, since he was physically present himself,  
3 is that he be asked questions as to what was said by each,  
4 and if he can't recall, this document can be used to refresh  
5 his recollection. I suggest that would be the proper procedure.  
6

7 MR. KAPLAN: May I have a continuing objection,  
8 without jumping up?

9 THE COURT: You have made your objection, and it  
10 continues.

11 (In open court.)

12 BY MR. PEDOWITZ:

13 Q What, if anything, was said to the defendant in  
14 Mr. Batchelder's office, and by whom?

15 THE COURT: If you recall. If you have a recollec-  
16 tion of what Mr. Batchelder said, if anything, and what the  
17 defendant said. Do you have a clear recollection?

18 THE WITNESS: Well, I have a recollection of the  
19 substance of it. I don't think I can give everything exactly  
20 as it happened.

21 THE COURT: Do the best you can.

22 A He began by -- he had a form on his desk, and he  
23 advised the defendant as to who he was and what he had been  
24 arrested for. And following that he read from the form as  
25 far as -- he read what the defendant's constitutional rights

1 jgcg 75

Dowl-direct

2 were.

3 THE COURT: Do you recall the words that he read  
4 out as he spoke to the defendant?

5 THE WITNESS: Not specifically, your Honor.

6 THE COURT: All right.

7 Q I now show you what has been marked Court Exhibit 1  
8 for identification.

9 THE COURT: Does Court Exhibit 1 refresh your  
10 recollection as to what Mr. Batchelder specifically said?

11 THE WITNESS: Yes, it does, your Honor.

12 THE COURT: Would you tell us what he said and then  
13 tell us what, if anything, the defendant said?

14 THE WITNESS: Shall I start from the beginning  
15 again?

16 MR. PEDOWITZ: Yes, please.

17 THE WITNESS: He advised the defendant as to who he  
18 was --

19 MR. KAPLAN: I object to the reading.

20 MR. PEDOWITZ: He is not reading.

21 THE COURT: I don't want him to read. I want him  
22 to refer to it and refresh his recollection so he can be as  
23 exact as possible with reference to what Mr. Batchelder said.

24 Now, at one point he did say Mr. Batchelder read  
25 certain things. If his recollection is refreshed as to what

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2 Mr. Batchelder read, he may read what Mr. Batchelder read, if  
3 that's his testimony.

4 MR. PEDOWITZ: Your Honor, may I lay a prior founda-  
5 tion?

6 THE COURT: Yes.

7 BY MR. PEDOWITZ:

8 Q Mr. Dowd, how many times have you heard this parti-  
9 cular form read to a defendant in the United States Attorney's  
10 office?

11 MR. KAPLAN: I'm sorry, your Honor. I spoke to my  
12 man and I didn't hear that. I apologize.

13 THE COURT: Yes, of course.

14 (Question read)

15 A Approximately, I would have to say, a couple of  
16 dozen times.

17 Q And what, if anything, did Mr. Batchelder say?  
18 Now refresh your recollection from Court Exhibit 1.

19 A He told the defendant who he was, that he was an  
20 Assistant United States Attorney. He told him why he had been  
21 arrested, what --

22 Q Please speak up so that the last juror can hear you.

23 A He advised the defendant as to what he was being  
24 charged with, and at that point he read from the form. He  
25 stated that the defendant had a constitutional right to

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Dowd-direct

2 "refuse to answer any of my questions," the form says, and --

3 MR. KAPLAN: I object to the reading.

4 THE COURT: No. He read that --

5 He said to him, "You have a constitutional right to  
6 not answer any of my questions." Those were his words?

7 THE WITNESS: Yes. He read from the form.

8 THE COURT: He read from the form. All right. Go  
9 ahead.

10 A (Continuing) And then he asked, after each question  
11 he asked the defendant, "Do you understand?" at which time  
12 the defendant replied "yes." The United States Attorney  
13 wrote "yes" in the space on the form.

14 THE COURT: You saw him do that?

15 THE WITNESS: Yes.

16 THE COURT: All right. Go ahead. He asked the  
17 first question and he wrote an answer. Then did he ask  
18 another question?

19 THE WITNESS: Yes, he did.

20 THE COURT: What was that question?

21 THE WITNESS: Shall I read it or as I recall?

22 THE COURT: If you read something, and you can be  
23 most accurate by reading it to the jury, you may do so.

24 THE WITNESS: He said, "You have an absolute right  
25 to remain silent, and if you choose to answer any questions,

any statements you do make can be used against you in a court of law. Do you understand?" At which point the defendant replied "yes," and the U. S. Attorney wrote "yes" after the question.

At that point he said, "You have a right to consult an attorney and to have that attorney present during this interview. Do you understand that?" And the defendant replied "yes," and Mr. Batchelder wrote "yes" after the question.

The next question was, "If you do not have funds to retain an attorney, an attorney will be appointed to represent you and you do not have to answer any questions before this attorney is appointed, and you can consult with him. Do you understand that?"

The defendant answered yes, and he wrote "yes" after it.

He then asked him, "Understanding your rights as I have explained them, do you want to give me some information at this time about your background and your version of the facts?" At which point the defendant answered yes.

BY MR. PEDOWITZ:

Q After Mr. Batchelder had read from this form and the defendant had given the answers which you have just testified to, did the defendant make certain statements?

2 A Yes, he did.

3 Q Was he asked what his address was?

4 A Yes, he was.

5 Q What, if anything, did he say?

6 A Well, he gave the address at 64th Circle in the  
7 Fresh Meadows section.

8 MR. KAPLAN: Your Honor, I object to this.

9 THE COURT: Just tell us what he said in words or  
10 substance. Did he say, "I live at" or "I reside at" or "You  
11 can find me at"?

12 THE WITNESS: I don't recall exactly what he said.

13 THE COURT: Give it to us to the best of your  
14 ability.

15 THE WITNESS: As I recall, the address he gave as  
16 his own was the address at which we arrested him, 64th Circle  
17 in Fresh Meadows, Queens.

18 THE COURT: So he gave you an address in Queens.

19 THE WITNESS: Yes, your Honor.

20 THE COURT: What, if anything else, did he say?

21 MR. PEDOWITZ: Your Honor, may I continue from here?

22 THE COURT: Yes, of course. You have a prepared  
23 examination. I certainly think you are entitled to it.

24 MR. PEDOWITZ: Thank you, your Honor.

16 25 Q Was the defendant asked whether he used drugs?

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MR. KAPLAN: I object.

THE COURT: You are leading the witness. That is objected to. It is stricken. The jury is directed to disregard it.

Next question.

Q What, if anything, did the defendant say about his physical connection with drugs?

MR. KAPLAN: I object, your Honor.

THE COURT: All right.

Was there any discussion regarding the subject of drugs? Yes or no.

THE WITNESS: Yes, your Honor.

THE COURT: Would you tell us, in words relative to who said what and then relative to what was said, what in fact was said?

A The United States Attorney Hatchelder asked him a question, which is also on the form, as to whether he uses narcotics or not, at which point the defendant answered no.

MR. KAPLAN: I object and move to strike and move for the withdrawal of a juror.

THE COURT: If that question was asked and answered, the answer is no. I am going to let it stand. I deny your motion.

MR. KAPLAN: I respectfully except, your Honor.

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2 BY MR. PEDOWITZ:

3 Q What, if anything, further did the defendant say?

4 A Well, the United States Attorney had asked him  
5 specifically if he wanted to make any statements as far as  
6 the sale of cocaine.

7 MR. KAPLAN: I object, your Honor, and move to  
8 strike.

9 THE COURT: If that's what he said. And what  
10 did the defendant say, if anything?

11 THE WITNESS: Well, the way the questions were  
12 asked, as I recall, the U. S. Attorney asked about a specific  
13 date.

14 THE COURT: Did he say it - the U. S. Attorney, that  
15 is - in the form of a question and then what, if anything,  
16 was responded by the defendant? Do you recall?

17 THE WITNESS: I don't recall specifically.

18 THE COURT: All right. The witness says he has no  
19 recollection at this point.

20 BY MR. PEDOWITZ:

21 Q I show you what has been marked as Court Exhibit 1  
22 for identification. I ask you whether this document refreshes  
23 your recollection.

24 A Yes, it does.

25 THE COURT: All right. Now that your recollection

has been refreshed, would you tell us what, if anything, Mr. Batchelder said to the defendant and what, if anything, the defendant said to Mr. Batchelder?

A Well, Mr. Batchelder had asked him if he wanted to make any statements as far as his version of the facts of the case. The defendant, as I recall, the first statement he made was that he had nothing to do with the sale of cocaine.

MR. KAPLAN: Your Honor, I object and move to strike on the same grounds.

THE COURT: Overruled.

Go ahead.

A (Continuing) I don't know what I said last. He stated that he had nothing to do with the sale of cocaine.

At that point, as I recall, the way it was asked was as to what individuals he knew. I believe the U. S. Attorney asked him about the individuals involved in the case. I believe the first individual he spoke about was Charlie, and he said that he worked with Charlie, that Charlie had offered him marijuana, on occasions he had driven to work with Charlie, and that Charlie did use drugs.

And he went on to state that his girl friend was a dancer, she was a flamenco dancer, and that whenever he went to the restaurant where his girl was dancing that he met many

1 people who used cocaine and that he had been offered a sample,  
2 which he said was in tin foil, and that he thinks, or he re-  
3 calls, that he gave it to Charlie and that Charlie had brought  
4 two Americans to his house. I believe he said two Americans.  
5 I remember he said one of them was named Tony.  
6

7 Q Could you keep your voice up, please?

8 A One of the American's name was Tony; that Charlie  
9 had told the defendant that these Americans were interested  
10 in buying cocaine.

11 The defendant stated that he had gotten ahold of a  
12 friend of his named Mamua and that Mamua had said, "Bring the  
13 Americans to a restaurant called La Paella," and then he had  
14 brought the Americans to La Paella; that, I believe he said,  
15 the restaurant was closed and he had met Mamua there and that  
16 they had gone a few blocks south, or further downtown from  
17 that restaurant, where they went to a bar at 125th Street and  
18 that they got into the car, that Mamua had obtained a package  
19 of cocaine, and he wasn't too sure as far as the details went  
20 on that.

21 He said that the American had given him about \$800,  
22 he didn't remember just how much; that the American had gotten  
23 the package of cocaine and gone into the men's room of the  
24 bar, that he had come out and said that the cocaine was okay,  
25 he said that he had tested it, and at that point he said he

1 didn't recall whether he had the money in his hands or whether  
2 he had the cocaine in his hands, he wasn't sure of it, but  
3 he said that Mamua had gotten the cocaine from somebody else,  
4 that he didn't know who it was, and at that point they all  
5 left the bar.  
6

7 Q Was the defendant also questioned about a sale of  
8 cocaine --

9 MR. KAPLAN: Your Honor, I object to the leading.

10 THE COURT: Yes.

11 MR. KAPLAN: Especially now, your Honor.

12 THE COURT: Of course. And it is most inappropriate.

13 Q What, if anything, further did the defendant say?

14 A He also stated that Mamua had a friend named Jose,  
15 that -- I don't recall how it began exactly, but that the  
16 Americans were interested in buying more cocaine, that he had  
17 spoken to Jose and that Jose said that he would sell the  
18 defendant's friend cocaine but that he did not want to meet  
19 the person, and that he had met the American at Bayona  
20 Restaurant downtown, that Jose had showed up, that Jose didn't  
21 meet the American, that Jose had given him a package for the  
22 American, that he brought the package into the restaurant.

23 He also stated that there was an argument as to  
24 the price of the cocaine, and I don't recall specifically how  
25 the argument was settled but that he did get the money from

1 jgcg 85

Dowd-direct/cross

2 the American --

3 MR. KAPLAN: Your Honor, the word "he". Could he  
4 just explain?

5 THE COURT: Yes. I think you are going to have to  
6 be clear. You've said "he." Several people have been men-  
7 tioned in this testimony. Who were you speaking of at this  
8 point?

9 THE WITNESS: The defendant stated that the American  
10 had given the money to the defendant and that the defendant  
11 had given the money to Jose for the package of cocaine and  
12 that he, meaning the defendant, had given the package to the  
13 American.

14 And the defendant stated that the defendant received  
15 money from the American for the transaction.

16 MR. PEDOWITZ: Your Honor, I have no further ques-  
17 tions of this witness at this time.

18 MR. KAPLAN: With your Honor's permission, may I  
19 just have a few moments?

20 THE COURT: Yes, indeed.

21 (Pause.)

22 THE COURT: You may proceed, Mr. Kaplan.

23 CROSS-EXAMINATION

24 BY MR. KAPLAN:

25 Q How long have you been an agent, Mr. Dowd?

1 JC 36

2 is to blow the deal. He stayed outside and he saw the  
3 defendant each and every night for each and every one of  
4 those six incidents. The defendant was there.

5 Why do you need fingerprints? The defense  
6 talks about fingerprints on a glass. Agent Rabourn saw him  
7 there and Agent Alleva saw him there, and Agent Dowd, as you  
8 recall, testified that he saw him there, too.

9 What other corroboration do we have in addition  
10 to the narcotics and the surveillance testimony? We have  
11 the words of the defendant himself after he was arrested on  
12 February 21st.

13 What did he say? Like every person who has been  
14 caught, he says, "I didn't sell cocaine. I wasn't involved.  
15 I didn't want to be involved. I didn't want to make money  
16 that way."

17 But then --

18 MR. KAPLAN: Your Honor, I will object to "just  
19 like every defendant," those words.

20 THE COURT: Yes. All right. I think the jury  
21 should concentrate on the activities of Mr. Ansin and  
22 shouldn't be concerned about what other people might or might  
23 not do when they are questioned.

24 You may proceed.

25 MR. PEDOWITZ: But then the questioning disclosed

1 JG 37

2 that the Assistant United States Attorney knows a little  
3 more about these deals than nothing. So what does the  
4 defendant say? He confirms each and every one of the  
5 facts on November 13th and November 26th --

6 MR. KAPLAN: Your Honor, I object to "each and  
7 every one of the facts." That is not in evidence, and that  
8 is not the case.

9 THE COURT: That is his argument. The jury's  
10 recollection will govern.

11 MR. PEDOWITZ: And we'll come back to that in  
12 more detail.

13 Now, finally, the corroboration of Agent Alleva.  
14 You saw him. You saw Agent Rabourn and you saw Agent  
15 Alleva on the stand. Did you get the impression that they  
16 were lying to you? What possible motive would they have  
17 to lie to you? They are sworn to uphold the federal law.  
18 They took the stand and they took the oath. If they per-  
19 jured themselves, they would be fired and they would be  
20 prosecuted.

21 MR. KAPLAN: I object to that.

22 THE COURT: Sustained. Yes. Ignore that,  
23 ladies and gentlemen.

24 MR. PEDOWITZ: You recall that there has been  
25 testimony here that this investigation resulted in the arrest

1 JG 41

2 person who asked about tests. He went down a list of tests.  
3 He didn't ask about infra red spectroscopy. They had no  
4 reason to tell him. And when they tried to expand on their  
5 answers, what did Mr. Kaplan tell them? "Just answer yes  
6 or no."

7 MR. KAPLAN: I object to that too, Judge.

8 THE COURT: The jury will recall what you told  
9 them or didn't tell them. Let's proceed.

10 MR. PEDOWITZ: Government Exhibit 5A, ultraviolet  
11 spectroscopy, gas chromatography, two very good tests. Dr.  
12 Sawinski didn't think it was necessary to perform infra red  
13 spectroscopy. But, ladies and gentlemen, if on the basis  
14 of the testimony you don't think that was sufficient, I  
15 don't care; the Government doesn't care. 5A simply isn't  
16 all that important.

17 We have two more blasts from the shotgun: We  
18 had an informant involved in this case. Yes, on November  
19 13th there was an informant present. The United States  
20 Supreme Court said, in *Roviero versus the United States* --

21 MR. KAPLAN: I object to that.

22 THE COURT: Yes. You are not to preach on the  
23 law. The subject of the law is reserved to the Court, and  
24 I do not want to hear any further citation of what the  
25 Supreme Court may or may not have said. I will charge on

1 JG 42

2 the matter in question.

3 Let's proceed.

4 MR. PEDOWITZ: It has been recognized continually  
5 that informants become necessary in the area of narcotics.

6 MR. KAPLAN: Your Honor, I object to that too.  
7 That is not fair comment on the record.

8 THE COURT: Let's get on with it. What is  
9 recognized and not recognized is not for you to comment on.

10 MR. PEDOWITZ: Yes, sir.

11 THE COURT: You comment on the evidence. The  
12 jury will disregard the last remark.

13 MR. PEDOWITZ: Yes, your Honor.

14 The final blast, the final one that I can ascer-  
15 tain, is that the defendant and other people he was involved  
16 with weren't arrested on November 13th and they weren't  
17 arrested on November 26th and they weren't arrested on a  
18 whole lot of dates.

19 They weren't arrested, as you've heard, because  
20 the Drug Enforcement Administration attempts to continue  
21 investigations by using people who they know are narcotic --

22 MR. KAPLAN: I'm sorry, Mr. Pedowitz.

23 MR. PEDOWITZ: Your Honor, that is in the record.

24 THE COURT: I recall this. If my recollection  
25 is incorrect, it is the jury's recollection which will

1 JG 44

2 calling his man Pedro. He made a number of phone calls.  
3 He came back to the table. Everyone piled into Alleva's  
4 Cadillac. Alleva, of course, was using the name Tony that  
5 night.

6 They drove over and they dropped off Carol. They  
7 drove over to another diner and they made another phone call  
8 to Pedro, Schreier did. They got back in the car. Where  
9 did they drive? They drove to 194th Lane and 74th Circle,  
10 the residence of the defendant.

11 The defendant got into the car. He directed  
12 Agent Alleva to La Paella Restaurant, 3 Hamilton Place, up  
13 off 134th Street and Broadway. There a gypsy cab was  
14 waiting, three people in the gypsy cab. Two of them get  
15 out of the gypsy cab. Pedro Luis Ansin, the defendant, gets  
16 out of the Cadillac. He walks over to the gypsy cab. He  
17 returns with one of the three people from the gypsy cab.  
18 That person is introduced as Mamua.

19 Mamua then directs the group in the Cadillac,  
20 Alleva, Schreier, the informant, the defendant, down to El  
21 Reloj Bar on 125th Street. They enter. All of them enter.  
22 This is observed by Agent Rabourn. All of these movements  
23 are observed by Agent Rabourn.

24 They walk in. Mamua goes to the bathroom, comes  
25 back, hands the defendant a package, Government Exhibit A.

1 JG 63

2 cluded my charge.

3 Thank you.

4 (Recess)

5 CHARGE OF THE COURT

6 (Ward, J.)

7 It is the custom in this court that the juror  
8 seated in seat number one will serve as the fore person of  
9 the jury. In this case, Miss Edna Fisher will serve as  
10 your fore person, or forelady. Her function will be to  
11 communicate with the Court any requests which you make by  
12 notes which she will write and which will then be sent out  
13 to the Court, should you require anything.

14 I will be available to the jury, as will counsel,  
15 throughout your deliberations. Should you need anything,  
16 you will send a note out from the jury room. To the extent  
17 it is possible, we will comply with your requests. We will  
18 try to do so as promptly as possible. Sometimes, however,  
19 compliance does not come immediately, and I just ask you to  
20 be patient if no response to your note comes back by immed-  
21 i ate return delivery.

22 The only person through whom you will communicate,  
23 once you are placed in the jury room, will be the Marshal  
24 or Marshals, who will be sworn to attend you during your  
25 period of deliberation.

1 JC 64

2 Madame Forelady, ladies and gentlemen, we come  
3 now to that stage of the case where you and I do our part  
4 in the administration of justice. In this case your role  
5 is to pass upon and decide the factual issues. You are the  
6 sole and exclusive judges of the facts. You pass upon the  
7 weight of the evidence. You determine the credibility of  
8 the witnesses. You resolve such conflicts as there may be  
9 in the evidence and you draw such reasonable inferences as  
10 may be warranted by the testimony or exhibits in the case.

11 My function is to instruct you as to the law  
12 applicable to the case. As I've said previously, it is  
13 your duty to accept the law as I state it to you in these  
14 instructions and as I've stated it to you in prior instruc-  
15 tions given during the course of the trial, and you are to  
16 apply the law to the facts as you find them.

17 With respect to any factual matter, it is your  
18 recollection and yours alone that governs. Anything that  
19 counsel, either for the Government or the defendant, may  
20 have said with respect to matters in evidence or as to any  
21 factual matter, whether stated in a question, in argument,  
22 in the opening statement or in summation, is not to be  
23 substituted for your own independent recollection.

24 So too, anything I may have said during the trial  
25 or may refer to during the course of these instructions as

1       jq 65

2       to any matter in evidence or as to any factual matter is  
3       not to be taken in lieu of your own recollection.

4               As I have indicated, should you require assistance  
5       with regard to testimony, you may request that any portion  
6       of the testimony or any portion of my charge be read back  
7       to you. You will then be brought into the courtroom and  
8       the portion of the testimony or the portion of the charge  
9       which you request will be read to you.

10              In the same vein, should you wish to see the  
11       indictment or any document or other material, except for  
12       the envelopes, which is in evidence, you may call for that  
13       material and it will be sent in to the jury room for you to  
14       see.

15              Pedro Luis Ansin has pleaded not guilty. There-  
16       fore the Government has the burden of proving the charges  
17       against him beyond a reasonable doubt. It is a burden that  
18       never shifts and remains upon the Government through the  
19       entire trial.

20              A defendant does not have to prove his innocence.  
21       On the contrary, he is presumed to be innocent of the charges  
22       contained in the indictment. The presumption of innocence  
23       was in his favor at the start of the trial and continues in  
24       his favor throughout the trial. It is removed if and when  
25       you are satisfied that the Government has sustained its

1 JG 66

2 burden of proving the guilt of the defendant beyond a reason-  
3 able doubt. Reasonable doubt is something which I will  
4 define and explain shortly.

5 As I told you when you were being selected, an  
6 indictment is not evidence. It is a technique or method or  
7 procedure by which persons accused by a grand jury of crimes  
8 are brought into court and then their guilt or innocence  
9 is determined by a trial jury, such as you are. An indict-  
10 ment has no evidentiary value. An indictment does not  
11 constitute proof or evidence. It is merely an accusation.

12 The indictment in this case, as tried before you,  
13 contains four counts. However, for technical reasons, only  
14 Counts One, Two and Three are presently before you. Briefly  
15 stated, Count One charges that Pedro Luis Ansin; Jose  
16 Jauregui, also known as Aramis Fernandez, also known as Jose  
17 Torres; Mario Garcia, also known as Mamua; Carmella Jinokaur,  
18 Charles Schrier and Pedro Canales conspired to distribute  
19 and possess with intent to distribute narcotic drug controlled  
20 substances.

21 Counts Two and Three are called substantive  
22 counts. Count Two charges that Pedro Luis Ansin and Mario  
23 Garcia, also known as Mamua, actually did distribute and  
24 possess cocaine, a narcotic drug controlled substance, with  
25 the intent to distribute it. Count Three charges that Jose

1 JG 67

2 Jauregui, also known as Aramis Fernandez, also known as Jose  
3 Torres, and Pedro Luis Ansin actually did distribute and  
4 possess cocaine with the intent to distribute it.

5 I shall now read the indictment. "The Grand Jury  
6 charges:

7 "(1) From on or about the 1st day of November  
8 1973, and continuously thereafter, up to and including the  
9 date of the filing of this indictment, in the Southern Dis-  
10 trict of New York, Pedro Luis Ansin, Jose Jauregui, also  
11 known as Aramis Fernandez, also known as Jose Torres, Mario  
12 Garcia, also known as Mamua, Carmella Jinokaur, Charles  
13 Schreier and Pedro Canales, the defendants, and others to  
14 the Grand Jury unknown, unlawfully, intentionally and know-  
15 ingly combined and conspired, confederated and agreed  
16 together and with each other to violate Sections 812,  
17 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

18 "(2) It was part of said conspiracy that the  
19 said defendants unlawfully, intentionally and knowingly would  
20 distribute and possess with intent to distribute Schedule I  
21 and II narcotic drug controlled substances, the exact amount  
22 thereof being to the Grand Jury unknown, in violation of  
23 Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United  
24 States Code.

25 "Overt Acts

1 JG 68

2 "In pursuance of said conspiracy and to effect  
3 the objects thereof, the following overt acts were committed  
4 in the Southern District of New York:

5 "(1) On or about November 13, 1973, the defend-  
6 ants Charles Schreier and Pedro Luis Ansin had a meeting at  
7 3 Hamilton Place, New York, N. Y.

8 . "(2) On or about November 13, 1973, the defend-  
9 ants Mario Garcia, also known as Mamua, and Carmella Jinokaur  
10 went to the area of 3 Hamilton Place, New York, N. Y.

11 "(3) On or about November 13, 1973, the defend-  
12 ants Mario Garcia, also known as Mamua, Charles Schreier  
13 and Pedro Luis Ansin had a meeting at the El Reloj Restaurant  
14 at Broadway and 125th Street, New York, N. Y.

15 "(4) On or about November 13, 1973, the defend-  
16 ants Pedro Luis Ansin and Mario Garcia, also known as Mamua,  
17 sold approximately 25.21 grams of cocaine hydrochloride for  
18 \$900.

19 "(5) On or about November 26, 1973, the defend-  
20 ant Jose Jauregui, also known as Aramis Fernandez, also  
21 known as Jose Torres, drove to the vicinity of the Bayona  
22 Restaurant, 52 Eighth Avenue, New York, N. Y.

23 "(6) On or about November 26, 1973, the defend-  
24 ants Jose Jauregui, also known as Aramis Fernandez, also  
25 known as Jose Torres, and Pedro Luis Ansin sold approximately

1 JG 69

2 116.5 grams of cocaine hydrochloride for \$2,800.

3 "(7) On or about December 7, 1973, the defend-  
4 ants Pedro Canales, Carmella Jinokaur and Mario Garcia,  
5 also known as Mamua, had a conversation concerning the  
6 delivery of a sample of cocaine.

7 "(8) On or about December 7, 1973, the defend-  
8 ant Pedro Canales delivered a sample of cocaine in the  
9 La Bilbaina Restaurant at 218 West 14th Street, New York,  
10 N. Y. (Title 21, United States Code, Section 846.)

11 "Count Two

12 "The Grand Jury further charges:

13 "On or about the 13th day of November 1973, in  
14 the Southern District of New York, Pedro Luis Ansin and  
15 Mario Garcia, also known as Mamua, the defendants, unlawfully,  
16 wilfully and knowingly did distribute with intent to distrib-  
17 ute a Schedule II narcotic drug controlled substance, to  
18 wit, approximately 25.21 grams of cocaine hydrochloride  
19 (Title 21, United States Code, Section 812, 841(a)(1) and  
20 841(b)(1)(A); Title 18, United States Code, Section 2).

21 "Count Three

22 "The Grand Jury further charges:

23 "On or about the 26th day of November 1973, in  
24 the Southern District of New York, Jose Jauregui, also known  
25 as Aramis Fernandez, also known as Jose Torres, and Pedro

1 JG 70

2 Luis Ansin, the defendant, unlawfully, wilfully and knowingly  
3 did distribute and possess with intent to distribute a  
4 Schedule II narcotic drug controlled substance, to wit,  
5 approximately 116.5 grams of cocaine hydrochloride (Title  
6 21, United States Code, Section 812, 841(a)(1), and  
7 841(b)(1)(A))."

8 As you have undoubtedly noted, the indictment  
9 names six defendants in all. However, only Pedro Luis  
10 Ansin is on trial before you. He is the only person whose  
11 guilt or innocence you must announce in your verdict,  
12 although in considering his guilt or innocence you may have  
13 to determine the nature of the participation, if any, of  
14 Jose Jauregui, Mario Garcia, Carmella Jinokaur, Charles  
15 Schreier and Pedro Canales.

16 In the determination of innocence or guilt, you  
17 must bear in mind that guilt is personal. The guilt or  
18 innocence of a defendant on trial before you must be deter-  
19 mined separately with respect to him solely upon the evidence  
20 presented against him or the lack of evidence.

21 The charges in this indictment refer to the  
22 violation of a federal law to which I have made reference.  
23 You heard me mention Sections 812, 841 and 846 of Title 21  
24 of the United States Code and also Section 2 of Title 18 of  
25 the United States Code. In pertinent part, Section 841

1 JG 71

2 provides:

3 "It shall be unlawful for any person know-  
4 ingly and intentionally to distribute or possess  
5 with intent to distribute a controlled substance."

6 Section 812 sets forth and defines controlled  
7 substances in various schedules. Schedule I of Section 812  
8 lists heroin as a controlled substance, and Schedule II of  
9 Section 812 lists as a controlled substance any derivative  
10 of coca leaves. Cocaine hydrochloride is such a derivative  
11 and is a narcotic drug controlled substance.

12 Section 846 makes it a crime to conspire to  
13 commit certain offenses, including the offense which I have  
14 defined above in Section 841.

15 Finally, Section 2 of Title 18 provides:

16 "Whoever commits an offense against the United  
17 States, or aids, abets, counsels, commands or  
18 induces or procures its commission, is punishable  
19 as a principal."

20 and further:

21 "Whoever wilfully causes an act to be done  
22 which if directly performed by him or another  
23 would be an offense against the United States is  
24 punishable as a principal."

25 As I have stated, Count One of the indictment

1 JG 72

2 charges that Pedro Luis Ansin, Jose Jauregui, Mario Garcia,  
3 Carmella Jinokaur, Charles Schreier and Pedro Canales  
4 conspired together to violate Sections 812 and 841 of Title  
5 21, United States Code. In order to find Mr. Ansin guilty  
6 of conspiracy as charged in Count One of the indictment, you  
7 must find beyond a reasonable doubt:

8 . First, that sometime between November 1, 1973  
9 and March 4, 1974, which was the date of the filing of this  
10 indictment, an agreement existed between Pedro Luis Ansin  
11 and any other person;

12 Second, that it was a part of this agreement  
13 either to distribute or to possess with intent to distribute  
14 Schedule I or Schedule II narcotic drug controlled sub-  
15 stances. As I indicated a few moments ago, heroin and  
16 cocaine hydrochloride are such narcotic drug controlled  
17 substances.

18 Third, that Mr. Ansin knowingly and wilfully  
19 associated himself with the conspiracy;

20 Fourth, that one of the conspirators committed  
21 at least one of the eight overt acts, which I read to you  
22 from the indictment, at or about the time and place alleged  
23 and that such overt act was knowingly done in furtherance of  
24 the conspiracy.

25 What is a conspiracy? A conspiracy is a

JG 73

a combination or agreement of two or more persons by concerted action to accomplish a criminal or unlawful purpose or some purpose not in itself criminal or unlawful by criminal or unlawful means. The gist of the crime of conspiracy is the unlawful combination or agreement to violate the laws. Whether or not the defendant accomplished what it is alleged he conspired to do is immaterial to the question of guilt or innocence.

A conspiracy has sometimes been called a partnership in criminal purposes in which every member becomes the agent of every other member. However, to establish a conspiracy the Government is not required to show that two or more persons sat around the table and entered into a solemn contract, orally or in writing, stating that they have formed a conspiracy to violate the law, setting forth details of the plan, the means by which the unlawful project is to be carried out, or the part to be played by each conspirator.

Indeed, it would be extraordinary if there were such a formal document or specific oral agreement. Your common sense will tell you, when men in fact undertake to enter into a criminal conspiracy, much is left to unexpressed understanding. Conspirators do not usually reduce their agreements to writing or acknowledge them before a notary public. Nor do they publicly broadcast their plans.

1 JG 74

2 From its very nature, a conspiracy is almost always charac-  
3 terized by secrecy, thereby rendering detection difficult.

4 Thus, it is sufficient if two or more persons  
5 in any manner, through any contrivance, impliedly or tacitly  
6 come to a common understanding to violate the law. Express  
7 language or specific words are not required to indicate  
8 assent or attachment to a conspiracy.

9 Let me emphasize to you that it is not required  
10 that you find all six of the alleged conspirators whose  
11 names are set forth in the indictment to be in fact members  
12 of the conspiracy in order to find that a conspiracy existed.  
13 You need only find that the defendant entered into an unlaw-  
14 ful agreement with one or more other persons in order to  
15 find that a conspiracy existed. It is not necessary for  
16 the Government to prove the success of the conspiracy in  
17 order to establish a violation of a conspiracy statute.

18 As a conspiracy is basically an agreement to  
19 violate the law, it may exist even though you find that the  
20 objectives were never accomplished. On the other hand,  
21 proof concerning the accomplishment of the objects of a  
22 conspiracy may be the most persuasive evidence of the exist-  
23 ence of the conspiracy itself. To simplify this, perhaps  
24 a bit more.

25 Success of the venture - in this case the

1       JC 75

2       Government alleges that the venture was the sale of heroin  
3       and cocaine hydrochloride for money - is the best proof of  
4       the venture or the agreement.   In determining whether there  
5       has been an unlawful agreement, you may judge acts and  
6       conduct of the alleged members of the conspiracy which are  
7       done to carry out an apparent criminal purpose.

8               The adage "Actions speak louder than words" is  
9       applicable here.   Usually the only evidence available is  
10      that of disconnected acts on the part of the alleged individ-  
11      ual conspirators, which acts, however, when taken together  
12      in connection with each other and with the reasonable infer-  
13      ences flowing therefrom, show a conspiracy or agreement to  
14      secure a particular result as satisfactorily and as con-  
15      clusively as more direct proof.

16             If upon such consideration of all the evidence,  
17      direct and circumstantial, and I'll comment on those two  
18      terms in a moment or two, if you find beyond a reasonable  
19      doubt that the minds of the alleged conspirators, or at least  
20      two of them, met in an understanding way and that they  
21      agreed, as I have explained a conspiratorial agreement to  
22      you, to work together in furtherance of the unlawful scheme  
23      alleged in the indictment, then proof of the existence of  
24      the conspiracy is established.

25             As I have told you, the indictment alleges that

1 JC 76

2 the conspiracy was to both distribute and to possess with  
3 intent to distribute heroin and cocaine. The Government's  
4 proof need not establish all of these objectives of the  
5 conspiracy. If you find that there was an agreement which  
6 had as its object either the unlawful possession of heroin  
7 or cocaine or the unlawful distribution of heroin or cocaine,  
8 then you may be satisfied that the existence of the conspir-  
9 acy is established.

10 Once satisfied that the conspiracy charges  
11 existed, you must ask yourself who its members were. In  
12 deciding whether a defendant was a member of the conspiracy,  
13 you should consider whether on all the evidence the individ-  
14 ual defendant whom you are considering was wilfully and  
15 knowingly a party to the conspiracy.

16 In determining whether Mr. Ansin became a member  
17 of the conspiracy, you must determine not only whether he  
18 participated in the conspiracy but whether he did so with  
19 knowledge of its unlawful purpose. Did he join with aware-  
20 ness of at least some of the basic aims and purposes of the  
21 conspiracy?

22 The word "knowingly" as defined in the crime  
23 charged here means that the particular act was done volun-  
24 tarily and purposely and not because of mistake or accident.  
25 Knowledge may be proven by a defendant's conduct and by all

1 JG 77

2 the facts and circumstances surrounding the case. No person  
3 can intentionally avoid knowledge by closing his eyes to  
4 facts which should prompt him to investigate.

5 The word "wilfully" is used in the crimes charged  
6 here and means that the act was committed by a defendant  
7 voluntarily, with knowledge that it was prohibited by law,  
8 and with the purpose of violating the law and not by mistake,  
9 accident or in good faith.

10 Knowledge is a matter of inference from facts  
11 proven. It is not necessary that the defendant be fully  
12 informed as to the details of the scope of the conspiracy  
13 in order to justify any inference or knowledge on his part.  
14 To have guilty knowledge, the defendant need not know the  
15 full extent of the conspiracy and all of its activities and  
16 actors.

17 The Government has introduced evidence concerning  
18 an alleged meeting on January 21, 1974 at La Paella Restaur-  
19 ant of the defendant and Special Agent Alleva. At that  
20 meeting the Government asserts the defendant introduced a  
21 man called Maximo to Special Agent Alleva in the hope that  
22 future sales of narcotics could be arranged.

23 You may consider, in determining whether the  
24 defendant acted with guilty knowledge or intent, the fact,  
25 if you find it true, that the defendant engaged in other

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transactions similar to those charged in the indictment. In addition, if you find that the defendant engaged in similar acts, you may consider that in deciding whether the defendant was a knowing participant in the conspiracy charged in the indictment and whether the conspiracy charged in the indictment in fact existed.

Once you have found the conspiracy to have existed and Mr. Ansin to have knowingly participated in it, the extent of his individual participation has no bearing on his guilt or innocence. The guilt of a conspirator is not measured by the extent or the duration of his participation. Even if he participated in it to a degree more limited than that of his coconspirators, an individual defendant is equally culpable so long as he was in fact a conspirator.

I want to caution you that mere innocent association with one or more of the conspirators does not make one a member of a conspiracy, nor is knowledge without participation sufficient. What is necessary is that the defendant participate with knowledge of at least some of the purposes of the conspiracy and with intent to aid in the accomplishment of those unlawful ends.

When people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in

1 JC 79

2 carrying out the conspiracy. Hence, the acts or declara-  
3 tions of one in the course of the conspiracy and in further-  
4 ance of a common purpose are deemed to be the acts of all  
5 and all are responsible for such acts.

6 Accordingly, if you find, in accordance with  
7 these instructions, that the alleged conspiracy existed  
8 and that the defendant was a participant in it, a knowing  
9 participant in it, then acts done and statements and declar-  
10 ations made in furtherance of the conspiracy by the persons  
11 found by you to have been members of the conspiracy may be  
12 considered against the defendant even though such acts or  
13 declarations were made in the absence and without the  
14 knowledge of the defendant.

15 It is important to note that this principle  
16 applies only to the acts and declarations done or made  
17 during the continuance of the conspiracy and in furtherance  
18 of it, that is, to carry out an unlawful objective or  
19 purpose of the conspiracy. It does not apply to acts or  
20 declarations which do not have these characteristics.

21 As I have already mentioned, the fourth essential  
22 element of the crime of conspiracy is that an overt act to  
23 effect the object of the conspiracy be committed by at least  
24 one of the coconspirators. An overt act is any step, action  
25 or conduct which is taken to achieve or further the objective

1 JG 80

2 of the conspiracy. An overt act need be neither criminal  
3 nor the very crime which is the object of the conspiracy.  
4 Thus, in this case, the overt acts listed in the indictment  
5 are not necessarily by themselves criminal or illegal.

6 If you find any of these acts were committed to  
7 further the unlawful enterprise, regardless of whether it  
8 was an act which by itself would be innocent, then the  
9 overt act requirement has been satisfied.

10 It is not necessary for the Government to prove  
11 that each member of the conspiracy committed or participated  
12 in the particular overt act, since the act of any one done  
13 in furtherance of the conspiracy becomes the act of all the  
14 other members. Also, the Government is not required to  
15 prove each of the overt acts. It is sufficient if it  
16 proves the commission of at least one of the overt acts at  
17 or about the time alleged.

18 You will recall that there were eight overt acts.  
19 I remind you that the Government must, in order to sustain  
20 its burden under Count One of the indictment, prove that at  
21 least one of these overt acts was committed in furtherance  
22 of the conspiracy. The following eight overt acts were  
23 alleged:

24 1. On or about November 13, 1973, the defendants  
25 Charles Schreier and Pedro Luis Ansin had a meeting at 3

1 JG 81

2 Hamilton Place, New York, N. Y.

3 2. On or about November 13, 1973, the defendants  
4 Mario Garcia, also known as Mamua, and Carmella Jinokaur  
5 went to the area of 3 Hamilton Place, New York, N. Y.

6 3. On or about November 13, 1973, the defendants  
7 Mario Garcia, also known as Mamua, Charles Schreier and  
8 Pedro Luis Ansin had a meeting at the El Reloj Restaurant  
9 at Broadway and 125th Street, New York, N. Y.

10 4. On or about November 13, 1973, the defendants  
11 Pedro Luis Ansin and Mario Garcia, also known as Mamua,  
12 sold approximately 25.21 grams of cocaine hydrochloride for  
13 \$900.

14 5. On or about November 26, 1973, the defendants  
15 Jose Jauregui, also known as Aramis Fernandez, also known  
16 as Jose Torres, drove to the vicinity of the Bayone Restaur-  
17 ant, 52 Eighth Avenue, New York, N. Y.

18 6. On or about November 26, 1973, the defendants  
19 Jose Jauregui, also known as Aramis Fernandez, also known  
20 as Jose Torres, and Pedro Luis Ansin sold approximately  
21 116.5 grams of cocaine hydrochloride for \$2,800.

22 7. On or about December 7, 1973, the defendants  
23 Pedro Canales, Carmella Jinokaur and Mario Garcia, also known  
24 as Mamua, had a conversation concerning the delivery of a  
25 sample of cocaine.

1 JG 82

2 8. On or about December 7, 1973, the defendant  
3 Pedro Canales delivered a sample of cocaine in the La Bil-  
4 baina Restaurant at 218 West 14th Street, New York, N. Y.

5 If you find that any one of these acts was done  
6 and that it was done in furtherance of the conspiracy  
7 charged, then this requirement has been satisfied.

8 . While the indictment charges in Count One that  
9 the conspiracy began on or about the 1st day of November  
10 1973 and continued to the date of its filing, which as I  
11 have indicated to you was March 4, 1974, it is not essential  
12 that the Government prove that the conspiracy started and  
13 ended on or about those specific dates. Indeed, in the  
14 present case the Government's proof, as I recall it, ended  
15 on January 21st, 1974. It is sufficient if you find that  
16 in fact a conspiracy was formed and existed for some sub-  
17 stantial time within the period set forth in the indictment  
18 and that at least one overt act was committed in furtherance  
19 thereof in that period.

20 We turn now to the so-called substantive counts,  
21 Counts Two and Three. Count Two charges that on or about  
22 November 13, 1973 Pedro Luis Ansin distributed approximately  
23 25.21 grams of cocaine hydrochloride and possessed it with  
24 intent to distribute it. Before you can find Mr. Ansin  
25 guilty of the crime charged in the second count of this

1 JG 93

2 indictment, you must be convinced beyond a reasonable doubt  
3 that the Government has proved the following elements:

4 First, that on or about November 13, 1973, Mr.  
5 Ansin distributed or possessed with intent to distribute a  
6 narcotic drug controlled substance; second, that he did so  
7 unlawfully, wilfully and knowingly; and third, that the  
8 substance in Government Exhibit 1A is in fact a narcotic  
9 drug controlled substance.

10 You will note that the first element of the  
11 offense is distributing or possessing with intent to dis-  
12 tribute a narcotic drug. At the outset you will note that  
13 these terms are used in the alternative. Therefore you  
14 may find the first element established if you are satisfied  
15 either that Mr. Ansin distributed or possessed with intent  
16 to distribute. You need not find that he did both.

17 What do these terms mean? The word "distribute"  
18 means the actual, constructive or attempted transfer of  
19 the drug. That definition is contained in Title 21, United  
20 States Code, Section 812, subdivisions 8 and 11. The word  
21 "possess" has its common, everyday meaning - that is, to  
22 have something within your control. And to have something  
23 within your control does not necessarily mean to have it in  
24 your hand or pocket. And the word "intent" refers to a  
25 person's state of mind. You will recall that I defined the

1 JG 84

2 word "intent" previously. I mention it again now.

3 Putting the words together, the term "possess  
4 with intent to distribute" can be fairly stated to mean to  
5 control an item with the state of mind or purpose of trans-  
6 ferring that item. As to the second element, the terms  
7 "unlawfully, wilfully and knowingly," which I also defined  
8 before, mean that you must be satisfied beyond a reasonable  
9 doubt that the defendant knew what he was doing and that he  
10 did it deliberately as opposed to mistakenly or accidentally  
11 or as a result of some coercion.

12 Of course, it is not necessary that Mr. Ansin  
13 knew that he was violating any particular law. Rather, it  
14 is sufficient if you are convinced beyond a reasonable doubt  
15 that he was aware of the general unlawful nature of his  
16 acts.

17 As to the third element, the indictment charges  
18 that the narcotic drug controlled substance is cocaine. I  
19 instruct you as a matter of law that cocaine is a narcotic  
20 drug controlled substance. You, however, must still find  
21 beyond a reasonable doubt whether the substance contained  
22 in Government Exhibit 1A is in fact cocaine.

23 Count Three charges that on or about November 26,  
24 1973 Pedro Luis Ansin distributed approximately 116.5  
25 grams of cocaine hydrochloride and possessed it with the

1 JG 85

2 intent to distribute it. Before you can find that Mr.  
3 Ansin is guilty of the crime charged in the third count  
4 of this indictment, you must be convinced beyond a reasonable  
5 doubt that the Government has proved the following elements:

6 First, that on or about November 26, 1973, Mr.  
7 Ansin distributed or possessed with intent to distribute  
8 a narcotic drug controlled substance; second, that he did  
9 so unlawfully, wilfully and knowingly as I have previously  
10 defined those terms; and third, that the substance in  
11 Government Exhibit 3A is in fact a narcotic drug controlled  
12 substance.

13 With respect to the charges contained in Counts  
14 Two and Three, it is not necessary for the Government to  
15 show that the defendant actually physically committed the  
16 crimes. You will recall that Section 2 of Title 18, United  
17 States Code, which I read to you a few minutes ago, provides  
18 that a person who aids and abets another to commit an  
19 offense is just as guilty of that offense as if he committed  
20 it himself.

21 Accordingly, you may find Mr. Ansin guilty of  
22 the offense charged in Count Two if you find beyond a reason-  
23 able doubt that Mario Garcia, also known as Mamua, committed  
24 the offense and that Mr. Ansin aided and abetted him.  
25 Similarly, you may find the defendant guilty of the offense

1 JG 86

2 charged in Count Three if you find beyond a reasonable  
3 a doubt that Jose Jauregui committed the offense and that  
4 Mr. Ansin aided and abetted him.

5 To determine whether a defendant aided and  
6 abetted in the commission of a crime, you ask yourself  
7 these questions: Did he associate himself with the venture?  
8 Did he participate in it as something he wished to bring  
9 about? Did he seek by his actions to make it succeed?  
10 If he did, then he is an aider and abetter.

11 Now, how do you determine the truth? You are  
12 the triers of the fact. And how do you appraise the  
13 credibility of the witnesses who appeared here and testified  
14 in this courtroom? Well, you use your own plain, everyday  
15 common sense. You brought your common sense with you the  
16 first day you stepped into the jury box. You've brought  
17 it back with you every day since. You have it with you  
18 now. You will take it with you into the jury room. And  
19 I am certain that when you return ultimately from the jury  
20 room, you will still have it with you.

21 You have seen the witnesses. You have observed  
22 the manner of their testifying. And whatever credit you  
23 may give them must be determined by their conduct and their  
24 manner of testifying and their relationship or interest in  
25 the outcome. In other words, you again apply your common

1 JG 87

2 sense in your every day experience.

3 You may, of course, take into consideration the  
4 interest of a witness. An interested witness is not  
5 necessarily unworthy of belief. It is just one factor,  
6 however, which you should consider and may consider in  
7 determining the weight and credibility to be given to that  
8 witness' testimony.

9 If any witness has wilfully testified falsely  
10 to any material fact, you may disregard all his testimony  
11 or accept such part of it as you believe worthy of belief  
12 or as it appeals to your reason or judgment. A witness  
13 may be discredited or impeached by contradictory evidence  
14 or by evidence that at other times the witness has made  
15 statements which are inconsistent with the present testimony  
16 of the witness. If you believe that any witness has been  
17 impeached and thus discredited, it is your exclusive province  
18 to give the testimony of that witness such weight and  
19 credibility, if any, as you may think it deserves.

20 The defendant has introduced evidence of his good  
21 reputation in his community prior to the indictment in this  
22 case. Such evidence may indicate to you that it is improbable  
23 that a person of good character would commit the crimes  
24 charged. Therefore you should consider this evidence along  
25 with all the other evidence in the case in determining the

1 JC 88

2 guilt or innocence of the defendant. The circumstances may  
3 be such that evidence of good character may alone create  
4 a reasonable doubt of the defendant's guilt although without  
5 it the other evidence would be convincing.

6 However, evidence of good reputation should not  
7 constitute an excuse to acquit the defendant if you, after  
8 weighing all the evidence, including the evidence of good  
9 character, are convinced beyond a reasonable doubt that the  
10 defendant is guilty of the crime charged in the indictment.

11 Evidence has also been introduced that the  
12 defendant made certain admissions to an Assistant United  
13 States Attorney in the presence of certain Government agents  
14 which relate to the crimes charged in the indictment. You  
15 must weigh such admissions with caution and scrutinize the  
16 circumstances surrounding them to determine whether they  
17 were made freely and voluntarily.

18 If you find that such admissions were made freely  
19 and voluntarily by the defendant, with knowledge of the  
20 nature of such admission and without fear or coercion either  
21 physical or psychological, or promise of reward, you may  
22 consider them together with all the other evidence in  
23 determining the innocence or guilt of the defendant. How-  
24 ever, if you find that the admissions were not made freely  
25 and voluntarily by the defendant, you should disregard them.

1 JG 89

2 entirely.

3 You will recall that the defendant did not testify.  
4 A defendant has the absolute right not to testify and you  
5 must not regard as prejudicial to Mr. Ansin the fact that  
6 he did not take the stand. You must not draw a presumption  
7 of guilt or any inference against Mr. Ansin because he did  
8 not testify.

9 There has been testimony with respect to the use  
10 by the agents of the Drug Enforcement Administration of the  
11 services of a person referred to as an informant. These  
12 services are availed of by Government agents to obtain leads  
13 and gain introductions to persons suspected of violating  
14 the law. The law from long ago has permitted the use of  
15 informants, provided the rights of a defendant are not  
16 violated. Whether or not you approve of the use of an  
17 informant in an effort to detect law violation is not to  
18 enter into your deliberations.

19 You may hear me sometimes refer to direct evidence  
20 and to circumstantial evidence. I did before, and I said  
21 I would get back to the matter. I've reached that point  
22 now. It is well for me now to explain the difference  
23 between these two types of evidence.

24 Direct evidence is where a witness testifies to  
25 what he saw, heard or observed, what he knows of his own

1 JG 90

2 knowledge, something which comes to him by virtue of his own  
3 senses. Circumstantial evidence is evidence of facts and  
4 circumstances from which one may infer connected facts  
5 which reasonably follow in the common experience of mankind.

6 Stated somewhat differently, circumstantial  
7 evidence is that evidence which tends to prove a disputed  
8 fact by proof of other facts which have a logical tendency  
9 to lead the mind to a conclusion that those facts exist  
10 which are sought to be established.

11 Circumstantial evidence, if believed, is of no  
12 less value than direct evidence, for in either case you must  
13 be convinced beyond a reasonable doubt of the guilt of a  
14 defendant. Let me take one simple example, one which is  
15 often used in this courthouse, to illustrate what is meant  
16 by circumstantial evidence.

17 We will assume that when you entered the court-  
18 house this morning, the sun was shining brightly outside  
19 and it was a clear day, there was no rain, the sky was clear.  
20 Now, assume that in this courtroom the venetian blinds behind  
21 you are drawn and the drapes have been closed so that you  
22 cannot look outside. Assume that you are sitting where  
23 you now sit in your jury box and despite the fact that it  
24 was dry when you entered the building somebody walks in the  
25 door opposite you with an umbrella dripping water, followed

1 JG 91

2 in a short time by a man with a raincoat and the raincoat  
3 is wet.

4 Taking our assumptions, you cannot look out of  
5 the courtroom to see whether it is raining or not. And,  
6 if you are asked, "Is it raining?", you cannot say you know  
7 it directly of your own knowledge. But certainly, upon  
8 the combination of facts as I have given them, even though  
9 when you entered the building it was not raining outside,  
10 it would be reasonable and logical for you to conclude that  
11 it was raining now.

12 That is about all there is to circumstantial  
13 evidence. You infer, on the basis of reason and experience,  
14 from an established fact the existence of some further fact.  
15 There are times when different inferences may be drawn from  
16 facts whether they are proved by direct or circumstantial  
17 evidence. The Government asks you to draw one set of  
18 inferences while the defendant asks you to draw another.  
19 It is for you to decide and for you alone what inferences  
20 you will draw.

21 Knowledge and intent, which I have mentioned  
22 before and tried to define for you, exist in the mind.  
23 Since it is not possible to look into a man's mind to see  
24 what went on, the only way you have for arriving at a decision  
25 is these inferences. It is for you to take into considera-

1 JC 92

2 tion all the facts and circumstances shown by the evidence,  
3 including the exhibits, and to determine from all such facts  
4 and circumstances whether the requisite knowledge and intent  
5 were present at the time in question.

6 Direct proof is unnecessary. Knowledge and  
7 intent may be inferred from all the surrounding circumstances.  
8 As far as intent is concerned, you are instructed that a  
9 person is presumed to intend the natural and probable or  
10 ordinary consequences of his acts.

11 Now, what is reasonable doubt? A reasonable  
12 doubt is such a doubt as would cause prudent men to hesitate  
13 to act in matters of importance to themselves. It is doubt  
14 which a reasonable person has after carefully weighing all  
15 the evidence. A reasonable doubt is one which appeals to  
16 your reason, your judgment, your common sense and your  
17 experience. Reasonable doubt is not caprice, whim or  
18 speculation. It is not an excuse to avoid the performance  
19 of an unpleasant duty. It is not sympathy for a defendant.  
20 Vague, speculative or imaginary qualms or misgivings are  
21 not reasonable doubt.

22 It is not necessary for the Government to prove  
23 the guilt of the defendant to a mathematical certainty or  
24 beyond all possible doubt. If that were the rule, few men  
25 or women, however guilty they might be, would be convicted.

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2 The reason is that in this world of ours it is practically  
3 impossible for a person to be absolutely certain of any  
4 controverted fact, which by its nature is not susceptible  
5 of mathematical certainty. In consequence, the law is  
6 such that in a criminal case it is enough that a defendant's  
7 guilt is established beyond a reasonable doubt, not beyond  
8 all doubt.

9 If, after a fair, impartial and careful considera-  
10 tion of all the evidence, you are convinced of the guilt of  
11 the defendant, you must convict. If, on the other hand,  
12 after such a fair, impartial and careful consideration of  
13 all the evidence, you doubt the defendant's guilt, you must  
14 acquit him.

15 Under your oath as jurors you cannot allow a  
16 consideration of the punishment which may be inflicted upon  
17 a defendant if he is convicted to influence your verdict in  
18 any way or in any sense enter into your deliberations. The  
19 duty of imposing sentence rests exclusively upon the Court.  
20 Your function is to weigh the evidence in the case and to  
21 determine the guilt or innocence of the defendant solely  
22 upon the basis of such evidence and the law. You are to  
23 decide the case upon the evidence and the evidence alone  
24 and you must not be influenced by any assumption, conjecture  
25 or sympathy or any inference not warranted by the facts until

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2 proven to your satisfaction.

3 The defendant has been charged with separate  
4 crimes in three counts of the indictment, which are being  
5 given to you, Counts One, Two and Three. When you deliber-  
6 ate, you should give separate consideration and render  
7 separate verdicts with respect to each count. You will  
8 vote with respect to the charges against Mr. Ansin first  
9 as to Count One, second as to Count Two, and finally as to  
10 Count Three. When you present your verdict, it will be  
11 in that same form.

12 The defendant is entitled to have his guilt or  
13 innocence as to each of the crimes charged determined from  
14 his own conduct and from the evidence which applies to him.  
15 If you find that the defendant is guilty beyond a reasonable  
16 doubt of any of the crimes charged in the indictment, a  
17 verdict of guilty as to that count should be returned against  
18 him. If you are not convinced that the defendant is guilty  
19 by proof beyond a reasonable doubt of any of the crimes  
20 charged in the indictment, then a verdict of not guilty as  
21 to that count should be returned against him.

22 I will conclude with just one or two brief  
23 remarks. There are twelve people on this jury. Any  
24 verdict must be the unanimous verdict of all of you. I  
25 will point out, however, that no one should enter upon the

1 JG 95

2 deliberation in the jury room with such pride of opinion  
3 that he or she would refuse to change it if convinced by  
4 intelligent argument on the part of another juror or jurors  
5 that they are right. However, you are not to do violence  
6 to your own well founded opinion and common sense.

7 As I said a few moments ago, you will be taking  
8 your good common sense into the jury room. I expect that  
9 when you come out of the jury room, as well as bringing out  
10 your good common sense, your good conscience will accompany  
11 you.

12 You are entitled, each of you, to your opinion.  
13 In other words, each of you must decide the case for himself  
14 or herself after thoroughly reviewing the evidence and  
15 exchanging views with your fellow jurors. After you have  
16 exchanged your views, you should vote on each count separately.  
17 The vote will be kept by your forelady.

18 Ladies and gentlemen, I have now completed my  
19 charge. Before sending you to lunch, which is my intention,  
20 I will see counsel at the side bar. In the meantime, I  
21 would ask our two alterante jurors to get whatever belongings  
22 they have from the jury room and to return to the courtroom,  
23 because after I send the twelve regular jurors to lunch I  
24 should like to speak briefly with the two alternate jurors.  
25 They are in the frustrating position of having sat through

1 JG 96

2 this case but will not be able to be present to deliberate  
3 with you. So, when I send them on their way today, I want  
4 to take a moment to thank them personally on behalf of all  
5 of us here for the service which they have rendered to this  
6 jury.

7 So, if our two alternate jurors would just step  
8 out and reclaim their belongings and return to the courtroom,  
9 I would appreciate it.

10 I will see counsel at the side bar.

11 (At the side bar)

12 THE COURT: Are there any exceptions or supple-  
13 mentary requests? First from the Government.

14 MR. PEDOWITZ: Your Honor, certainly no excep-  
15 tions. I did have one problem during the course of the  
16 conspiracy charge.

17 On one or two occasions there was reference to  
18 the conspiracy involving cocaine "and" heroin. On other  
19 occasions it was put in the alternative, "or." If there is  
20 any ambiguity, we would prefer that it be made clear to the  
21 jury that it is meant in the alternative and not in the  
22 conjunctive.

23 THE COURT: I don't find any ambiguity. You've  
24 charged Schedule I and Schedule II narcotic drug controlled  
25 substances and, as you know, cocaine is a Schedule II drug.

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2 MR. PEDOWITZ: Yes.

3 THE COURT: Heroin is a Schedule I drug and  
4 cocaine is a Schedule II drug. I don't believe there is  
5 any ambiguity. However, if the defendant wishes me to go  
6 back over that particular point, I will do it.

7 MR. KAPLAN: Your Honor, I would most respect-  
8 fully except to that portion of your Honor's charge that  
9 even mentions the name heroin, or the word "heroin," as  
10 not being charged and as having an adverse effect on the  
11 jury.

12 MR. PEDOWITZ: May we just go off the record  
13 for a second?

14 (Discussion off the record)

15 THE COURT: He can repeat it.

16 (Record read)

17 MR. KAPLAN: Not being charged in the indictment.

18 MR. PEDOWITZ: Your Honor, it is customary in  
19 our office to use a form indictment which does charge in the  
20 alternative. My understanding, however, and I've had many  
21 discussions and a number of arguments with other Assistants  
22 about this, is that the Court generally charges in the  
23 alternative.

24 THE COURT: Well, you've managed to plead in the  
25 conjunctive.

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2 MR. PEDOWITZ: Certainly, your Honor.

3 THE COURT: All right. The defendant excepts  
4 to mention of the word "heroin" at any point in the charge.  
5 I will deal with that in a supplementary fashion.

6 Is there anything else?

7 MR. KAPLAN: Yes. Your Honor, the defendant  
8 excepts to the somewhat lengthy exposition of the definition  
9 of conspiracy, especially insofar as it required the reread-  
10 ing of the overt acts done on two separate occasions. Again,  
11 most respectfully, your Honor, the adverse effect on the  
12 jury was that there comes a point that I believe that their  
13 rereading is tantamount to a possibility of their understand-  
14 ing it as though your Honor was marshaling some facts,  
15 although your Honor certainly did not marshal the facts at  
16 all.

17 So I would take exception, respectfully.

18 THE COURT: You have your exception to my having  
19 read from the indictment.

20 MR. KAPLAN: And that covers another exception,  
21 your Honor, that your Honor just mentioned, an exception to  
22 reading the indictment itself, especially the "a/k/a," that  
23 is, which appears in the indictment, the also known as,  
24 which of course I believe has an adverse effect by the  
25 mention of one who has a multitude of names.

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2 MR. PEDOWITZ: Your Honor, we believe that the  
3 record discloses in a number of instances Mr. Jauregui  
4 was referred to on a number of occasions as Aramis Fernandez,  
5 and I believe one of his other alternate names, Jose Torres,  
6 was also mentioned. Certainly I recall the name Mario  
7 Garcia being used in the alternative for Mamua.

8 THE COURT: I will let it stand.

9 Is there anything else, Mr. Kaplan?

10 MR. KAPLAN: Yes, your Honor. I would take  
11 exception to that portion of your Honor's charge where a  
12 series of negative examples of reasonable doubt is alluded  
13 to, that is, specifically your Honor, in defining reasonable  
14 doubt, referring to what is not reasonable doubt. I think  
15 that the emphasis might be of such a nature, again, as to  
16 adversely affect the jury.

17 I would instead ask your Honor, when your Honor  
18 asks me if I have additions to the charge, if your Honor  
19 would charge reasonable doubt in one of my additions, which  
20 will come when your Honor asks me for it.

21 MR. PEDOWITZ: The Government believes that the  
22 charge on reasonable doubt is a standard one.

23 THE COURT: It is. This has been passed upon  
24 in the circuit, as I understand it. In fact, the charge  
25 which I delivered here essentially, if I recall it correctly,

1 JG 100

2 was the subject of an affirmance from the Bench.

3 If you wish to pursue the matter of reasonable  
4 doubt, you may do so, but not here. I decline to supplement  
5 my charge in that regard.

6 MR. KAPLAN: Yes, sir.

7 THE COURT: Is there anything else?

8 MR. KAPLAN: One thing more, your Honor. As  
9 to the termination of the conspiracy, your Honor, I'm not  
10 certain whether I missed it or not or whether your Honor's  
11 charge included what constitutes a termination of a conspir-  
12 acy or at which time an alleged conspirator might terminate.

13 THE COURT: Well, under the circumstances, I  
14 would suggest that it could fairly be said that in this case  
15 the conspiracy could only be said to have terminated at the  
16 time of the arrest, and I should think that that doesn't  
17 exactly assist you in any way. I think the charge as  
18 delivered is adequate in this regard.

19 MR. KAPLAN: I have no further exceptions, your  
20 Honor.

21 THE COURT: Are there any supplementary requests?

22 MR. KAPLAN: My supplementary requests, your  
23 Honor, would be merely rephrasing of the reasonable doubt  
24 presumption.

25 THE COURT: I covered both of those subjects,

1 JG 101

2 I think, as thoroughly as I possibly can. I decline to  
3 supplement my charge on reasonable doubt and presumption of  
4 innocence.

5 Is there anything else?

6 MR. KAPLAN: Nothing else.

7 THE COURT: Mr. Pedowitz?

8 MR. PEDOWITZ: Nothing.

9 (Pause)

10 THE COURT: Gentlemen, I will supplement my  
11 charge on that matter which was excepted to by Mr. Kaplan,  
12 stating: "To the extent that the word 'heroin' was men-  
13 tioned in my charge, you are to disregard that word in  
14 determining the guilt or innocence of the defendant on the  
15 counts before you."

16 Is that satisfactory, gentlemen?

17 MR. PEDOWITZ: Yes, your Honor.

18 MR. KAPLAN: Your Honor, may the last phrase  
19 or clause of that sentence merely reflect that to the extent  
20 that the word "heroin" was indicated, that it plays no part  
21 in this case, it is just something a little more generalized,  
22 that it was just an inadvertent use of the term?

23 THE COURT: The word "heroin" plays no part in  
24 this case. I'll add those words, if that's satisfactory.  
25 Played, I guess, no part in this case. Is that satisfactory?

1 JG 102

2 MR. KAPLAN: Your Honor, could that be just  
3 read once more?

4 THE COURT: Yes.

5 "To the extent that the word 'heroin' was  
6 mentioned in my charge, you are to disregard that word."

7 MR. KAPLAN: Can we stop right there.

8 THE COURT: Yes. If that's what you want, yes.

9 MR. KAPLAN: That's fine.

10 THE COURT: Is that satisfactory?

11 MR. KAPLAN: That's fine.

12 THE COURT: All right. Is that satisfactory?

13 MR. PEDOWITZ: Yes.

14 THE COURT: Thank you, gentlemen.

15 (In open court)

16 THE COURT: Ladies and gentlemen, just one  
17 supplement to my charge.

18 To the extent that the word "heroin" was men-  
19 tioned in my charge, you are to disregard that word.

20 I have now completed my charge. Miss Kruger,  
21 would you please swear the marshals to attend the jury.

22 (Two United States Marshals were sworn.)

23 THE COURT: Marshal, would it be feasible for  
24 you to take the twelve jurors to lunch now?

25 THE MARSHAL: Yes, sir.

1 JG 103

2 THE COURT: That would be fine.

3 All right. I am going to instruct jurors one  
4 to twelve to proceed with the marshal to lunch. The  
5 marshals will then bring you back and they will take you  
6 to the jury room.

7 At the time you enter the jury room, when all of  
8 you are present you are to begin your deliberations on this  
9 case. Although everything has now been concluded, you  
10 will undoubtedly be sitting at separate tables having lunch,  
11 and rather than have groups begin a discussion of the case  
12 I ask you not to discuss the case to and from your going  
13 to lunch or at lunch but upon your return to the jury room  
14 begin your deliberations at that time.

15 Marshal, can you tell us, in view of the hour,  
16 what time you will return, so that I may direct counsel to  
17 return at the same hour?

18 THE MARSHAL: I would imagine, your Honor, at  
19 about 2.40 would be a safe assumption.

20 THE COURT: Very well.

21 I'll excuse the jury now and direct that they  
22 proceed with the marshal and then I will instruct counsel  
23 on our timetable.

24 Enjoy your lunch.

25 (At 1.26 p.m., the jury were escorted to

1 JG 104

2 lunch, after which they were instructed to return  
3 to the courtroom to begin their deliberations.)

4 MR. KAPLAN: Your Honor, I have the exhibits  
5 here.

6 THE COURT: I was going to get to that in a  
7 moment just as soon as the door is closed.

8 . At this time, late in the morning, early in the  
9 afternoon, I would like to thank our two alternate jurors,  
10 Mr. Steiner and Mrs. Guterman. Both of you have sat here  
11 patiently, attentively through the entire trial, and now,  
12 having sat through the appetizer and the main course, you  
13 miss the dessert.

14 I can only tell you, on my own behalf and on  
15 behalf of the court and on behalf of counsel, that we  
16 appreciate very much the time and effort that you jurors  
17 spent in coming here, working with us and being with us.  
18 I'm sorry that you will miss the deliberations in this case,  
19 but you did have the opportunity to sit through a trial  
20 from beginning to end and I think that that at least is  
21 something. So I do want to thank you. You are now  
22 excused.

23 (The two alternate jurors were discharged.)

24 THE COURT: I would suggest that the exhibits  
25 be checked out, possibly when you return from lunch, so that

1 JG 105

2 they are available should the jury request them.

3 In addition, I would suggest a semi-redacted copy  
4 of the indictment, eliminating Count Four, which is not a  
5 subject at issue. I think the page could be removed, and  
6 that would suffice, whatever the last page is.' So, if,  
7 as and when the jury requests the indictment, it is to be  
8 sent in but exclusive of Count Four.

9 Counsel are excused for a rather late lunch.  
10 You are directed to return at 2.40 p.m..

11 (Luncheon recess)

12 (At 4.15 p.m., in open court)

13 THE COURT: Good afternoon, everyone. We have  
14 received two notes from the jury, the first of which was  
15 received at 2.50 p.m. and was marked Court Exhibit 2 for  
16 identification. That note reads as follows:

17 "Request copy of three counts of indictment."

18 In view of the discussion which we had previously,  
19 Miss Kruger sent in the redacted indictment.

20 We have now received a second note from the jury,  
21 which has been marked Court Exhibit 3 for identification.  
22 The note, which was received at 4.10 p.m., reads:

23 "Request Judge's definition of 'reasonable  
24 doubt.'" Signed "Edna Fisher, the Forelady."

25 Mr. Reporter, would you turn in your notes to the

1 JG 106

2 portion of my charge which defines reasonable doubt and  
3 then, once we have it identified, we will bring the jury in  
4 and you will read it to them.

5 (Court Exhibits 2 and 3 marked.)

6 (Pause)

7 THE COURT: Bring out the jury.

8 (At 4.23 p.m., the jury returned to the  
9 courtroom.)

10 THE COURT: Good afternoon, ladies and gentlemen.  
11 I have here a note which we marked Court Exhibit 2 for  
12 identification, which reads as follows: "Request Judge's  
13 definition of reasonable doubt." Signed by your forelady,  
14 Edna Fisher.

15 I will ask the reporter to read the portion of  
16 the charge which I believe by your note you wanted. Since  
17 none of us were in the jury room, I don't know how broad or  
18 narrow your request was. I've tried to pick out just that  
19 portion of the charge which seems to answer your note.

20 I am going to have that read to you and then we  
21 will see where we go from there.

22 Mr. Reporter.

23 (Record read)

24 THE COURT: Thank you.

25 Ladies and gentlemen, I tried to narrowly focus

1 JG 107

2 on a short portion of my charge which I took to be responsive  
3 to the note which you sent out. However, since none of us  
4 were in the jury room with you, I would tell you that if  
5 any member of the jury wishes any more on this subject or  
6 any other subject contained within my charge, you may request  
7 that additional portions of the charge be read, you may do  
8 that by note, and we will respond immediately.

9 We will be out here waiting, if you either want  
10 more of this portion of the charge or any other portion of  
11 the charge. The Court and counsel will be at your disposal.

12 The jury is excused and directed to return to  
13 the jury room to continue their deliberations.

14 (At 4.27 p.m., the jury again retired to  
15 continue their deliberations.)

16 MR. PEDOWITZ: Your Honor, as the jurors were  
17 entering, I thought I overheard something about the heat  
18 in that room.

19 THE COURT: They did look kind of warm. I  
20 noticed the men were not wearing their jackets. It could  
21 be that it is warm in there. Why don't you see the marshal  
22 and have him inquire as to their comfort, and either the  
23 window might be opened a trifle or, if that cannot be done,  
24 we'll see if we can lower the heat.

25 MR. PEDOWITZ: Thank you, your Honor.

1 JG 108

2 (At 4.55 p.m., a note from the jury.)

3 THE COURT: We just received the following note  
4 from the jury, which we will mark Court Exhibit 4 for  
5 identification:

6 "Some of the jurors would like to make a tele-  
7 phone call. Is this possible?"

8 I propose to send in a note to the jurors that  
9 if anyone wishes a call made to their home, they may give  
10 the name and the number to the marshal and he will make  
11 the call and give any message that is requested.

12 MR. KAPLAN: Yes, sir.

13 THE COURT: Is that satisfactory?

14 MR. PEDOWITZ: Certainly, your Honor.

15 MR. KAPLAN: Yes, your Honor.

16 THE COURT: In fact, I'll have the marshal tell  
17 them that. Is that all right?

18 MR. KAPLAN: Yes, your Honor.

19 (At 5.20 p.m., in open court)

20 THE COURT: Gentlemen, I've just been handed a  
21 note from the jury, which we will mark as the next Court  
22 exhibit. The note reads as follows:

23 "A verdict has been reached." Signed "Edna  
24 Fisher."

25 (Court Exhibits 4 and 5 marked.)

xxx

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